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**CAPITAL PUNISHMENT IN THE NORTH EAST OF ENGLAND  
1800-1878 AND POST-MORTEM PUNISHMENT 1752-1878**

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**A thesis submitted in partial fulfilment  
of the requirements of the University of Sunderland  
for the degree of Doctor of Philosophy**

**DECEMBER 2019**

## **ABSTRACT**

The spectre of the scaffold has cast a long shadow over Western European history in the eighteenth and nineteenth centuries. Yet, its study in the provinces and regions of England is in its infancy, particularly in the North East of England. In addressing this gap, this thesis offers an extensive, predominantly qualitative, study of capital punishment in the North East of England between 1800-1878 and its attendant post-mortem punishments between 1752-1878. Through an investigation into the incidence, changing presentation and application of the death penalty in the region it seeks to examine some of the central themes apparent in the wider historiography. Most notably, the reasons behind the shifting nature of execution in the nineteenth century and its presentation and reception when removed behind the prison walls. In so doing, it will seek to question the idea of a singular and unified North East experience of execution, let alone an English one. The latter half of the thesis addresses the post-mortem punishments that attended executions between 1752-1878. In line with recent, pioneering national studies focused on post-mortem punishment, this study seeks to place the practice of the North East into context. A detailed analysis of both the practices of dissection and hanging in Chains are undertaken alongside the oft overlooked punishment of the denial of burial, latterly burial behind the prison wall. Through the analysis of these punishments the thesis seeks to question broader assumptions on the motivating factors behind the move to a system of private punishment.

## ACKNOWLEDGEMENTS

A scholar's work is only as strong as the people that supported it, sustained it and subjected it to detailed enquiry. In this instance I have many people to thank. I do this at the same time as acknowledging that any fault in the work is mine alone.

First and foremost, I would like to thank Sunderland University's Culture Beacon Fund without whose financial support this study would not have been possible. Secondly, thank you to my supervisor Peter Rushton for his unerring support, scholarly advice and regular cups of coffee and inspiring conversations. Just as academic supervision is key, so the administrative support of a university is essential to a student's success. In my case, the constant and unerring encouragement and assistance of Lynne Fenwick will be forever remembered; A shining light in the distance when the fog of study seemed too great to wade through.

I would also like to thank Barry Redfern who, like many amateur historians, worked tirelessly in his pursuit of the story of the gallows in this region before me and was always ready to offer advice, share findings and discuss ideas. Barry died during the writing of this PhD, but his work lives on in the many kind bequests he made of his research to Newcastle Central Library and the Tyne and Wear Archives Museum.

Special thanks must go to my wonderful wife, family, mother in law, Remy and Winston without whose support, encouragement and refusal to get bored by endless tales of long distant executions, this PhD would never have happened. Particular thanks to my father who has cast a critical eye over numerous drafts of this thesis. Thanks also to the SOTSRN Group who were a constant source of inspiration, mirth and support during my study and to colleagues and friends Helen Rutherford and Dr. Clare Sandford-Couch for helping me over the final hurdle.

Finally, to anyone reading this and currently undertaking a PhD and struggling, you will get there and it will be worth it. My only advice is to keep the words of Kant close at hand, 'out of the crooked timber of humanity, no straight thing was ever made.'



## NOTES ON REPRODUCTIONS

During the writing of this thesis I have run a blog alongside my study

([www.lastdyingwords.com](http://www.lastdyingwords.com)) detailing both my research and wider findings.

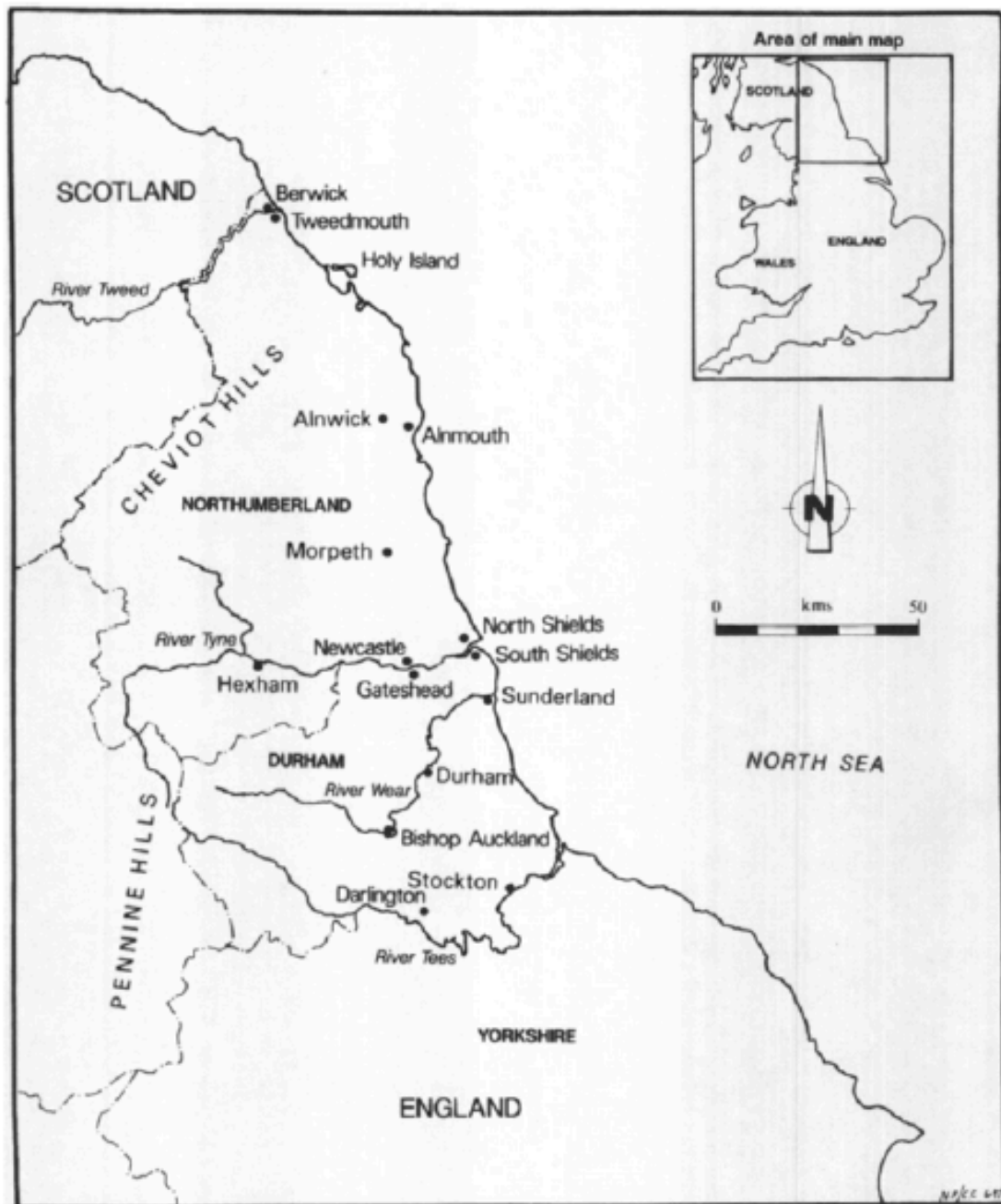
Furthermore, a small section of chapter two appears in the following article, P. Low,

‘The Changing Presentation of Execution in Newcastle Upon Tyne 1844-1863’,

*Law, Crime and History*, 8 (1) (2018), pp. 38-52.

Dedicated to the memory of Barry Redfern and Marcus Price.

## MAPS



North East England after Morgan and Rushton 1998.

## NEWCASTLE UPON TYNE - 1746



Thompson. *Newcastle upon Tyne* 1746, Scale 1" to 500 ft (approx). 1746. Image reproduced courtesy of Newcastle Collection  
<https://newcastlecollection.newcastle.gov.uk/maps/newcastle-upon-tyne-1746>

## NEWCASTLE UPON TYNE & GATESHEAD - 1808



G. Cole, Newcastle upon Tyne and Gateshead. 1808. No Scale available. Image reproduced courtesy of Newcastle Collection <https://newcastlecollection.newcastle.gov.uk/maps/newcastle-upon-tyne-1808>

## NEWCASTLE & GATESHEAD - 1870



J.Christie. *Christie's new plan of Newcastle upon Tyne and Gateshead*, 1870. Scale 8" to 1 mile.

Image reproduced courtesy of Newcastle Collection <https://newcastlecollection.newcastle.gov.uk/maps/newcastle-upon-tyne-1870>

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## **ABBREVIATIONS**

ASSI – Records of Assize Courts (TNA)

BPR – Belford Parish Registers

BS – Records of the Barber Surgeons

BNA – British Newspaper Archive

DLHS – Durham Local History Society

DURH – Records of Durham Palatinate Court (TNA)

DRO – Durham Record Office

DUSC – Durham University Special Collections

HO – Home Office Records (TNA)

HC – House of Commons

HL – House of Lords

JJC – John Johnson Collection, Bodleian Library, Oxford University

LB – Local Broadside (L.029.3) Newcastle Central Library

NCL – Newcastle Central Library

NLA – National Library of Australia

NUSC – Newcastle University Special Collections

NRO – Northumberland Record Office

QSO – Quarter Sessions

PP – Parliamentary Papers

RTC – River Tyne Collection Vol III, Newcastle Central Library (NCL)

SSAHSP - South Shields Archaeological and History Society Papers

TWAM – Tyne and Wear Archives Museum

TNA – National Archives

## Chapter One: Introduction

During the course of my work on this PhD the study of capital punishment has reached an intriguing crossroads. New 'global histories' of execution are being written in which an eminent scholar in the field can legitimately ask, 'can we learn something new about the subject?'<sup>1</sup> This whilst other historians, amongst them no less than the Editor of the very same volume, have forcefully asserted that our understanding of execution in England and Wales has barely gone, 'beyond a simple and largely unexplored dichotomy between the metropolis and the provinces.'<sup>2</sup> Fortunately, for all contributing authors concerned, Spierenburg's conclusion to his opening question was a resounding yes, pointing by way of example to the many newly discovered examples of execution ephemera, process and application. However, perhaps we may be bolder to ask, can we really write a global history when we know so precious little of the provincial and regional experience of capital punishment? It is in this latter vein of enquiry that this thesis sits, taking as its focus execution in the North East of England between 1800-1878 and its attendant post-mortem punishments between 1752-1878.<sup>3</sup>

By examining the incidence, presentation and reception of capital punishment and its attendant post-mortem punishments in the North East region, this thesis seeks to substantively question the received understanding of the execution as a universally similar experience. Far from a brutal period of scaffold-led-control, large swathes of the North East of England experienced relatively few executions. Furthermore, it will assert that the experience of execution was rarely, if ever, being witnessed in an identical form across the British Isles or indeed in neighbouring towns. This thesis instead asserts that even to speak of a 'North East' experience of execution, let alone a national one, is to ignore important regional nuances in its incidence, application and presentation.

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<sup>1</sup> P. Spierenburg., 'Foreword' in R. Ward (ed.) *A Global History of Execution and the Criminal Corpse* (Palgrave MacMillan, 2015), p. viii.

<sup>2</sup> P. King and R. Ward, 'Rethinking the Bloody Code in Eighteenth-Century Britain: Capital Punishment at the Centre and on the Periphery.' *Past & Present* 228 (August, 2015) pp.160-161.

<sup>3</sup> For the purposes of the study the North East refers to a sample of regions within the Northern Assize circuit, namely Durham, Newcastle, Northumberland. The reasoning for their inclusion is dealt with later in this chapter.

Additionally, this study questions the notion of a simple and universal snap transition between public and private execution, brought about by the 1868 Capital Punishment Act that saw executions move behind the prison walls.<sup>4</sup> The North East, particularly in the nineteenth century, saw neighbouring regions experience radically different executions at any one time. Instead this thesis asserts that the timeline and the decisions behind the changing presentation of punishment varied widely and were as much driven by immediate reactions to local circumstance, chief amongst them the execution crowd, as they were by any underlying and observable ideological bent or London-led change. Furthermore, the study seeks to show through a rare analysis of executions in the decade immediately following the 1868 Capital Punishment Amendment Act, that far from a decrease in the application of punishment, particularly in Durham, there was a marked increase in its use and even a return to triple executions. Indeed, far from a 'civilising moment' it will be shown that one can, arguably, more readily see an attempt to bring an increasing element of control over a spectacle that had lost its didactic force;<sup>5</sup> the steady exclusion of the press, as surrogate for the crowd, the removal of the last dying words of the condemned from both print and the inquest that followed post 1868 executions and the burial of the criminal body behind the prison wall being three clear instances of attempts to re-assert administrative authority over English law's most brutal punishment. These findings necessarily complicate any overarching narrative of a 'civilizing' movement changing the presentation of punishment, a notion, as we shall see, that has become the dominant discourse in regarding the disappearance from public view of execution.<sup>6</sup>

The final sections of this thesis will address the post-mortem punishments that attended certain crimes in this period. Enacted by the 1752 Murder Act, to add a 'further terror' to the punishment of execution, the dual punishments of dissection by the Barber Surgeons or Hanging in Chains (otherwise gibbeting) awaited murderers

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<sup>4</sup> The Capital Punishment Amendment Act 1868 (31 & 32 Vict. c.24).

<sup>5</sup> V. A. C. Gatrell, *The Hanging Tree: Execution and the English People, 1770-1868* (Oxford: OUP, 1994), p. 590.

<sup>6</sup> The theory of a 'civilizing' process originates from the work of Norbert Elias. The theory itself and the extent to which it has come to dominate the historiography of punishment will be dealt with in detail in this chapter. N. Elias, (1939) *The Civilizing Process*, 2nd Edition, (Oxford: Wiley-Blackwell, 2000).

or, in the case of the latter, some lesser crimes.<sup>7</sup> This thesis will argue that both were distinct from the other, gibbetting being an exclusively male punishment, and an expressly public one as opposed to dissection in which the public could choose to participate as spectators. It will seek to show that in many ways, despite its relatively limited use, it was the gibbet far more so than the gallows that became the lasting symbol of justice enacted in the North East. Additionally, it is the contention of this thesis that the focus on the removal of both punishments from the statute book in 1832 and 1834, has necessarily hidden an attendant punishment that continued long after; namely the denial of a Christian burial and the refusal to return the condemned body to immediate family, entrenched by the adoption of burial behind the prison wall. In as much, the aforementioned 1832 and 1834 Acts can be seen in line with the 1868 Capital Punishment Amendment Act as legislative acts in which the authorities increased their control over the body of the condemned both in life and in death. As such any notion of these acts being the by-product of a 'civilizing' or progressive movement must be brought into question, unless the progress is that of state control. In short, this thesis will locate the North East's experience of the scaffold and its attendant punishments; one largely absent from our collective understanding. Firstly though, we must gain an understanding of how we have reached this curious state of affairs.

## Historiography

The spectre of the scaffold casts a long shadow over both eighteenth and early nineteenth century England and its study. However, its place as a valid focus point for academics has been a relatively short one. In their sweeping review of the landscape of criminal history, Innes and Styles marked its origins in the late 1960s 'explosion of interest in eighteenth-century crime.'<sup>8</sup> Whilst not denouncing the import of earlier masterful tomes by, amongst others Leon Radzinowicz, they rightfully noted that works like his had a limited impact outside of their immediate field before the 1960s.<sup>9</sup> Indeed, as late as the 1980s scholars like John Langbein were

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<sup>7</sup> The Murder Act 1752 (25 Geo II c 37); The Hanging in Chains Act 1834 (4 & 5 Will. IV c.26)

<sup>8</sup> J. Innes & J. Styles, 'The Crime Wave: Recent Writing on Crime and Criminal Justice in Eighteenth-Century England,' *Journal of British Studies* 25 (4) (October 1986), p. 381.

<sup>9</sup> Somewhat ironically, given its late adoption into the field of historical enquiry, Radzinowicz's work remains to this day a seminal text and one, arguably, unmatched in its breadth and depth. One might

bemoaning the general ambivalence towards Radzinowicz's wider narrative.<sup>10</sup> With a few exceptions crime, in and of itself, was rarely a valid point of study prior to that era. Instead it was seen as one of myriad parts of the political landscape, over which the ruling class ruled. Characteristic of crime's role in this style of history is J.H. Plumb's assertion that the rulers of the time saw it alongside 'poverty, dirt, disease' as 'a part of the nature of the universe – mysterious yet inevitable.'<sup>11</sup> An approach to crime and its role in society that, 'rarely extended beyond a few brief remarks on lawlessness.'<sup>12</sup>

The first serious and sustained challenge to this orthodoxy came in the new move towards a 'social' history, more broadly defined as a history from below; characterised by non-crime focused works like E.P. Thompson's *Making of the English Working Class*.<sup>13</sup> If the works of this early movement lit the fuse under the predominant Whiggish histories, then the charge was fully detonated in the mid 1970s by the emergence of Hay et al.'s *Albion's Fatal Tree*.<sup>14</sup> With its unstinting focus on crime and the criminal law, its authors asserted that in legislation like the *Waltham Black Act* (1723) the ruling elite were using the criminal law as a means to re-assert authority and protect private interests; chief amongst them, property. A lasting offshoot of this broadly Marxist school of thought was the characterisation of the eighteenth century as the period of the so-called Bloody Code; an allusion to a rapidly burgeoning series of laws that had the gallows at their apex. Characteristic of these assertions was Hay's provocative postulation that the rulers of the eighteenth-century 'cherished the death sentence', a claim that sent 'shock waves through the polite smoking rooms of eighteenth-century studies.'<sup>15</sup>

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account for its limited impact as being based on a wider perception of it being a purely legal history. L. Radzinowicz (Sir.), *A History of English Criminal Law and Its Administration from 1750: The Movement for Reform, 1750-1833* (Macmillan Company, 1948)

<sup>10</sup> J. H. Langbein, 'Albion's Fatal Flaws,' *Past & Present* 98 (1) (February, 1983), pp. 96–120.

<sup>11</sup> J. H. Plumb, *The First Four Georges* (Batsford, 1954), p. 28.

<sup>12</sup> Innes and Styles, 'The Crime Wave' pp. 380-381.

<sup>13</sup> E. P. Thompson, *The Making of the English Working Class* (IICA, 1963).

<sup>14</sup> D. Hay, P. Linebaugh, J. G. Rule, E. P. Thompson and C. Winslow, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* 2nd edition (London: Verso, 2011).

<sup>15</sup> Hay, 'Property, Authority and the Criminal Law,' in *Albion's Fatal Tree* p. 17. I. Boal, 'Introduction to the Second Edition,' in *Albion's Fatal Tree*, p. xix.

The assertions of Hay et al. garnered a considerable following but were not without their stern critics; most notable amongst them Peter King and John Langbein.<sup>16</sup> One of the curious ironies in the early and formative years of a burgeoning criminal history, was the extent to which rival factions grew out of a fundamental agreement. The consensus arose and still largely exists around the notion that eighteenth century justice had a curious anomaly at its heart; a rapidly burgeoning capital statute book, alongside a declining execution rate. Put simply, it was a time where there had never been more offences for which to be hanged and yet so little chance of suffering the rope. However, where there was consensus on the eighteenth-century justice system being 'shot through with discretion,'<sup>17</sup> there was positive disharmony over whose the discretion was to give.

Testament to this disharmony was most apparent in John Langbein's incendiary article in 1985 challenging Hay's central contentions in *Albion's Fatal Tree*. He argued that Hay's 'conspiracy' of self-interest by a ruling elite was unfairly predicated on a wilful refusal to accept contemporary reformers at their word, a tenet he claimed was 'a staple of Marxist argumentation.' Langbein instead called for a reappraisal of Radinowicz's earlier contribution arguing that, far from a conspiracy, nearly all of the discretionary powers in the justice system were 'exercised by people not fairly to be described as the ruling class.'<sup>18</sup> In this same vein Peter King argued that the 'key decision maker' in the justice system in that period was not the Judge but the victim.<sup>19</sup> In as much, and in line with Radzinowicz's earlier assertions, the gallows came to be seen as a necessary surrogate for a nation devoid of a permanent police force or indeed any sustained and visible measure of justice.<sup>20</sup> Hay's assertions are now largely considered an outlier, albeit it a remarkable path-breaking one, to a

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<sup>16</sup> Langbein, 'Albion's Fatal Flaws', pp. 96-120; Peter King, 'Decision-Makers and Decision-Making in the English Criminal Law, 1750-1800,' *The Historical Journal* 27 (1) (March, 1984), pp. 25-58.

<sup>17</sup> P. King, *Crime, Justice, and Discretion in England 1740-1820* (Oxford; OUP, 2000), p. 1.

<sup>18</sup> It is important to note that Langbein emerged from the field of Law, as his incendiary refutation of Hay rests largely on Hay's refusal, unlike Langbein's preferred scholar, Radzinowicz, to take 'seriously' the evidence of the key legislators and reformers of the age. Where Langbein took reformers like Eden and Romilly at their word, Hay chose to see their actions as a bi-product of a 'conspiracy' of self-interest by a ruling elite. A notion Langbein, rightly questions, by flagging the peculiar Englishness of this phenomenon. Langbein, 'Albion's Fatal Flaws,' p. 114, 120.

<sup>19</sup> King, 'Decision-Makers,' p. 27.

<sup>20</sup> Langbein, 'Albion's Fatal Flaws,' p. 115-16. For a detailed authoritative history of the establishment of a professional police force see Clive Emsley, *The English Police: A Political and Social History* (Longman: 1996); *The Great British Bobby: A History of British Policing from the 18th Century to the Present* (Penguin: 2009).



wider consensus about the manifold avenues and people involved in obtaining a death sentence. Although they have achieved longevity in two ways; firstly, in promoting the supremacy of the Bloody Code and secondly, as evidenced by Linebaugh in *The London Hanged*, in highlighting that Tyburn's victims were invariably the 'propertyless and oppressed.'<sup>21</sup> Accepting the latter as fairly incontrovertible, it is to the former of these that we now turn.

## **The So-Called Bloody Code**

The narrative of the Bloody Code and a system in which the gallows were 'the climactic moment in a system of criminal law based on *terror*' had, until very recently, stayed largely unchanged.<sup>22</sup> Testament to this could be seen in Gatrell's masterly work on the English experience of execution, in the eighteenth and nineteenth century, in which he asserts that the 'sanction of the gallows and the rhetoric of the death sentence were central to all relations of authority in Georgian England.'<sup>23</sup> However, this orthodoxy had a fundamental flaw which is only just starting to be uncovered; namely its almost myopic focus on London and the South East.

There are well-established reasons why our predominant understanding of execution is a London or South East based one, the most pertinent being the wealth of available data. Path-breaking projects like *The Old Bailey Online*, containing within it the *Ordinary of Newgate's Accounts*, and *London Lives* have made both small and large scale quantitative and qualitative examinations of execution, the criminal trial and criminals themselves infinitely more achievable and have opened their study to a multitude of different disciplines.<sup>24</sup> In the North East, as in most other regions there are notable gaps in the historical record that make attaining an accurate picture of the practice of capital punishment significantly more challenging, not least the absence of a recorder, equivalent to the Ordinary of Newgate. As Morgan and

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<sup>21</sup> P. Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (Verso, 2003), 74.

<sup>22</sup> Hay, 'Property, Authority and the Criminal Law', p. 18.

<sup>23</sup> Gatrell, *The Hanging Tree*, p. 32.

<sup>24</sup> Tim Hitchcock, Robert Shoemaker, Clive Emsley, Sharon Howard and Jamie McLaughlin, *et al.*, *The Old Bailey Proceedings Online, 1674-1913* ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), version 8.0, March 2018) Accessed 4 January, 2019; Tim Hitchcock, Robert Shoemaker, Sharon Howard and Jamie McLaughlin, *et al.*, *London Lives, 1690-1800* ([www.londonlives.org](http://www.londonlives.org), version 2.0, March 2018). Accessed 18 January, 2019

Rushton said of eighteenth-century execution in the North East, if it was a dramatic performance, the region lacked a professional theatre critic.<sup>25</sup> However, the comparative paucity of data elsewhere in the UK and particularly in the North East does not therefore negate the validity of its study: quite the contrary. Indeed, only truly through understanding the role of execution in the regions and peripheries can one begin to make the sort of assertions popularised by Hay et al.

Questioning of this London centric orthodoxy is not entirely absent amongst scholars. Indeed, in the vital work of Morgan and Rushton, the North East is amongst the few Northern regions to have been given a detailed and much needed examination. However, the study itself is confined to the eighteenth century and is a wider analysis of crime and law enforcement, execution and most notably its paucity in the region playing a vital but fleeting role in a larger analysis of crime and its attendant punishments.<sup>26</sup> This study aside, questioning of the application of execution in the regions and provinces of England is in an embryonic stage.<sup>27</sup> In a 2013 article, leading criminal historian Simon Devereaux began the process of problematizing the 'Bloody Code' by 'recalculating carefully' the number of executions that were ordered by the Old Bailey between 1760-1837.<sup>28</sup> The irony of Devereaux's focus being on London is not lost, but it is nevertheless an important and long needed study. Only in the last few years has there been a serious shift of focus to the regions and peripheries, a move towards what King and Ward have

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<sup>25</sup> G. Morgan and P. Rushton, (1998) *Rogues, Thieves And the Rule of Law: The Problem Of Law Enforcement In North East England, 1718-1800* (London: UCL Press, 2005), p. 139.

<sup>26</sup> Alongside the work of Morgan and Rushton, there are a number of amateur works on execution in the North East that are worthy of attribution. The works of Barry Redfern are worthy of particular note with their detailed focus on execution in both eighteenth-century Newcastle and latterly Northumberland and Berwick Upon Tweed. Similarly, Redfern's tireless work to uncover details of particular criminal cases and his donation of his records to Newcastle Central Library and the Tyne and Wear Museums Archive are an invaluable source for any scholar of the gallows in the region. B. Redfern, *The Shadow of the Gallows: Crime and Punishment on Tyneside in the Eighteenth Century* (Newcastle: Tyne Bridge Publishing, 2003); *The Gallows Tree: Crime and Punishment in the Eighteenth Century: Northumberland and Berwick-upon-Tweed* (Newcastle: Tyne Bridge Publishing, 2013). Similarly, on the wider Northern Circuit, the work of David Bentley is an admirable, if flawed, initial scoping of the landscape and changing nature of execution in the eighteenth and nineteenth century. D. Bentley, *Capital Punishment in Northern England 1750-1900* (Sheffield: Createspace Independent, 2008).

<sup>27</sup> A notable early work that highlighted the relatively low percentage of people actually executed in the period, in spite of a burgeoning number of capital crimes, is King's study of eighteenth and early nineteenth-century Essex. King, *Crime, Justice, and Discretion*.

<sup>28</sup> S. Devereaux, 'England's 'Bloody Code' in Crisis and Transition: Executions at the Old Bailey, 1760–1837,' *Journal of the Canadian Historical Association* 24 (2) (2013) p. 71.

labelled the 'spatial dimensions of capital punishment' most notably Wales and latterly Scotland.<sup>29</sup>

Interestingly, these early interrogations into execution outside London, most notably in Wales and Scotland, have produced largely complementary responses. However, there are notes of disagreement, not least Wallis' assertion that 'there was no difference' between England and Wales in the 'treatment of the most serious offenders,' which sits somewhat at odds with King and Ward's assertion of a 'stark centre-periphery divide' in the application of the Bloody Code.<sup>30</sup> However, where there is clarity is that certain regions, amongst them the North East of England experienced comparatively low incidences of Capital Punishment.<sup>31</sup> In one sense the North East is far closer, both geographically and statistically, to Scotland than to London as recent studies have shown.<sup>32</sup> Indeed, far from a period of sanguinary control, the North East experienced relatively few executions between 1752-1878, with a total of only 102 people executed in Durham, Newcastle and Northumberland (less than any one decade in London and Middlesex between 1750-1830).<sup>33</sup> Indeed, in Newcastle alone, in the 126 year period in question, only 17 people were executed

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<sup>29</sup> King and Ward, 'Rethinking the Bloody Code' p. 160. For coverage of the Welsh courts see J. Minkes, 'Wales and the 'Bloody Code': The Brecon Circuit of the Court of Great Sessions in the 1750's', *Welsh History Review*, xxii (2006), pp. 673–704; D. J. V. Jones, 'Life and Death in Eighteenth-Century Wales', *Welsh History Review*, x (1980-1); *Crime in Nineteenth-Century Wales* (Cardiff, 1992); J. Walliss, 'Wales and the 'Bloody Code': The Courts of Great Sessions, 1805–30', *Welsh History Review*, 27 (1) (July, 2014) pp. 28-52; *The Bloody Code in England and Wales, 1760–1830* (Palgrave MacMillan, 2018). For a detailed overview of the Scottish experience of execution in the period see coverage of the Scottish experience of execution see R. Bennett, *Capital Punishment and the Criminal Corpse in Scotland 1740 to 1834* (Basingstoke: Palgrave Macmillan, 2018). *For the experience of female criminals in the Scottish Justice system see Anne-Marie Kilday, Women and Violent Crime in Enlightenment Scotland* (Suffolk: Royal Historical Society, Boydell Press, 2015).

<sup>30</sup> In part this may be owing to the very different source set and crimes studied. King and Ward focused exclusively on property crimes, whilst Walliss' study covers the full gamut of capital offences. Additionally, both studies rely on radically different source material, the former the Sheriff's Cravings, a little known resource that accounted for the expenses of Sheriff's in administering executions and the latter the Welsh Court of Great Sessions. King & Ward, 'Rethinking'; Walliss, 'Wales and the 'Bloody Code'

<sup>31</sup> King and Ward, 'Rethinking,' pp. 166–68. Amongst their key findings this study highlighted Cornwall, Northumberland and Wales as areas in which the rate of execution was peculiarly low.

<sup>32</sup> In her study of execution between 1740 and 1834 Bennett identified a total of 505 executions, a near identical figure to executions in one decade in London and Middlesex. Gatrell's figures for Capital Convictions and executions at the Old Bailey (for London and Middlesex) between 1781-1970 recorded a total of 501 executions. Table 2.1. 'Total Executions by Circuit', Bennett, *Capital Punishment in Scotland*, p.34; Table I. 'Capital convictions and executions, London and Middlesex (Old Bailey), 1701-1834', Gatrell, *Hanging Tree*, p. 616.

<sup>33</sup> Gatrell, *The Hanging Tree*, p. 616. The figures cited are from Table 1. *Capital conviction and executions, London and Middlesex (Old Bailey), 1701-1834*. Put lowest and highest decade figures here.

(a number that is less than were hanged on one day at London's Tyburn in 1741).<sup>34</sup> Similarly, between 1800-1868 only 35 people suffered the rope in Newcastle, Northumberland and Durham, roughly one execution every two years across a large swathe of the North of England.

These figures then are remarkable for being unremarkable, particularly when compared to Gatrell's figures for London and Middlesex. The temptation in explaining them is to think of the North East as a disconnected other, unswayed by the whims of the capital, but when hitherto established patterns of execution are searched for, the North East appears concurrent. This is most apparent in the sharp rise in executions in the 1780s, largely recognised as being 'partly caused...by the surrender of Yorktown in the American Colonies in 1781.'<sup>35</sup> Similar patterns appear in the nineteenth century with the end of execution sentences for anything other than murder post 1830 similarly apparent in the North East (1820s in the case of the North East).<sup>36</sup> In one sense then these figures would appear to lend weight to the argument that the region was not a disconnected other, unaffected by the whims of its surrounding regions. Certainly, crime reports in the regional press were aware of the national as much as the local picture. Reporting in 1779 on the theft of two horses from 'before the door' of a resident of notorious criminal haunt Gateshead Fell, the *Newcastle Courant* opined, 'Robberies and Thefts are now come to such an alarming height in this country, that it is hard to say when or where property is safe.'<sup>37</sup> In as much, the relative paucity of executions cannot be simply understood

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<sup>34</sup> In a single day in 1741 twenty people were hung together at Tyburn, amongst them was renowned pickpocket Jenny Diver. Ordinary's Accounts, 18th March 1741, page 1017. Accessed 9<sup>th</sup> January, 2019 Old Bailey Proceedings Online ([www.oldbaileyonline.org](http://www.oldbaileyonline.org), version 8.0, 09 April 2019), Ordinary of Newgate's Account, March 1741 (OA17410318).

<sup>35</sup> For the best summary of the eighteenth-century link between demobilisation and rising crime see D. Hay, 'War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts' *Past & Present* 95 (May, 1982), pp.117-160. The war, dearth and rising crime narrative is not without its critics. Emsley, amongst others, has cautioned against the 'simplistic assumption' that dearth and demobilisation automatically led to rising crime, not least because the figures available are 'fragmentary' as large numbers of men, in wartime, who would otherwise have been indicted for their crimes, were 'encouraged or pressurised' to enlist. C. Emsley, *Crime and Society in England, 1750-1900*, (London & New York: Routledge, 2018) p. 34.

<sup>36</sup> Gatrell, *The Hanging Tree*, p. 619. In the regions studied in this thesis the final execution for a charge other than murder was the double execution of Mark Lawson and William Currie (for highway robbery) at Morpeth on the 20<sup>th</sup> March, 1822. The same year Henry Anderson was hung at Durham on the charge of rape, the final case of a non-murder sentence leading to the gallows in the period there. Newcastle's was markedly earlier with James O'Neil becoming the last case, hung in 1816 for Highway Robbery.

<sup>37</sup> *Newcastle Courant*, 19<sup>th</sup> September, 1779.

as an outlier but more indicative of individual and localised responses, not therefore in line with the notion that what started in London was simply replicated and spread out across the country.

At this stage, it is necessary to note that this thesis does not contend to sit alongside this burgeoning school of big data and quantitative studies into execution and punishment. Indeed, it is a central contention of this study that in the ever-growing move to big data analysis, regional difference and variation has too often been lost. The same accessibility and abundance of data that has meant London dominates our understanding of execution and punishment, is writ even larger in these projects. This is not to negate either the motivation of these projects or the need for a detailed quantitative examination of execution in the North East, but to suggest it is another study for another time. Instead this thesis seeks to complement the early quantitative strides into provinces like the North East by offering a qualitative account of the everyday life of execution, how it was perceived, presented and what role it played in the region.<sup>38</sup> In doing this it aims to address what is often lost in wider studies of the gallows, namely nuance and regional difference.

When one considers the data alone what is missed is the communal experience of an execution. Figures that show a relative dearth of executions in regions such as the North East need to be seen in a more nuanced context. In Newcastle Upon Tyne, for example, at the 1829 execution of Jane Jamieson some 20,000 people were reported as attendant on The Town Moor to view her execution. Similarly at the send-off of Mark Sherwood in 1844 one paper remarked that ‘there could not have been less than 25,000 people present, independent of the hundreds who lined the

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<sup>38</sup> Good examples of this early work into the experience of execution in the English provinces and Scotland and Wales, can be seen in the work of Bennett (Scotland), Dyndor (Northampton), Tulloch (Lincoln), Walliss (Norfolk & Wales). Bennett, *Capital Punishment*; Z. Dyndor, ‘Death Recorded: Capital Punishment and the Press in Northampton, 1780–1834’, *Midland History* 33, (2) (September, 2008) pp. 179–95; J. Tulloch, ‘The Privatising of Pain: Lincoln Newspapers, ‘Mediated Publicness’ and the End of Public Execution’, *Journalism Studies* 7 (3) (June, 2006) pp. 437–51; J. Walliss, ‘Representations of Justice Executed At Norwich Castle: A Comparative Analysis of Execution Reports in the Norfolk Chronicle and Bury and Norwich Post, 1805-1867’, *Law, Crime & History* 3 (2) (2013); ‘Wales and the ‘Bloody Code’; ‘‘The Great Portion of the Scum of Society’’? Representations of Crowds in the Lancashire Press, 1830-1868’, *Law, Crime & History* 6 (2) (2016) pp. 71–90. Also worthy of particular note is Poole’s work on, the comparatively rarer, crime scene executions in the period S. Poole, ‘For the Benefit of Example’: Crime-Scene Executions in England, 1720–1830 in R. Ward (ed.) *A Global History* (Palgrave Macmillan, 2015), pp. 71-101.

streets on the way to the place of execution.’<sup>39</sup> In one sense then, public execution may have been a comparatively limited phenomenon, however it could be argued that crowds of an estimated 20,000-40,000 people in a town with a registered population in 1831 of 42,760 are testament to the fact that it was almost unavoidable.<sup>40</sup> Executions at Tyburn, even when one includes the attendant procession to the site pre-1783, were in many senses experienced in a pocket of the metropolis and as such were avoidable spectacles, regardless of their frequency. By comparison in places like Newcastle it was arguably far harder to miss the execution spectacle. Whilst the lessons of justice may have been limited in the North East, they did not want for eager pupils. As one observer of a Glasgow hanging poetically stated, ‘If you teach a moral lesson in a grand, impressive way, it is difficult to see how you can have too many pupils.’<sup>41</sup> In as much one could argue that, in spite of the limited incidence of execution, the didactic intentions of the spectacle were met by as eager an audience as in London. Although, as was the arguably the case in the capital, whether the lessons were heeded as the authorities intended in the North East is far less clear.

### **Chronologies of Punishment:**

The second key area of this thesis addresses what can broadly be categorised as the changing nature of punishment. The genus of this debate is located in the nineteenth century shift away from a demonstrably public system of punishment to an expressly private one. Much like the historiographical debate surrounding the Bloody Code, there is consensus on the observable changes in punishment practice, namely that public punishments largely disappeared and were replaced by a system

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<sup>39</sup> *London Standard*, 12<sup>th</sup> March, 1829; *The Times*, 26<sup>th</sup> August, 1844

<sup>40</sup> A. W. Purdue, *Newcastle: The Biography*, (Gloucestershire: Amberley, 2011) p. 175. Slight fluctuations in the population figures recorded have led to minor discrepancies in previous histories with Middlebrook asserting the population in 1831 at 53,613 as derived from the census of that year. Sydney Middlebrook, *Newcastle upon Tyne: Its Growth and Achievement* (Newcastle Upon Tyne: Newcastle Journal, 1950) p. 175. As with all estimations of populations in this period the author notes caution. Similarly, numerous studies have noted that caution must be taken with reported execution crowd sizes in the period, most notably Gatrell, *Hanging Tree*, 57. An assertion backed up by later studies of execution in Northern England, Bentley, *Capital Punishment in Northern England* p. 5.

<sup>41</sup> A. Smith, ‘A Lark’s Flight,’ in *Dreamthorp: A Book of Essays Written in the Country*, ed. Alexander Smith (ed.) (Strahan, 1863), p. 94. Accessed 14<sup>th</sup> Dec, 2018  
[https://books.google.co.uk/books?redir\\_esc=y&id=uy8CAAAQAAJ&q=too+many+pupils#v=snippet&q=too%20many%20pupils&f=false](https://books.google.co.uk/books?redir_esc=y&id=uy8CAAAQAAJ&q=too+many+pupils#v=snippet&q=too%20many%20pupils&f=false)

of private punishments and imprisonment. Indeed, few can contend with Evans' assertion that,

In almost all major European states, the eighteenth and early nineteenth centuries saw a diminution of public punishment, the abolition of torture, the banishing of the more baroque cruelties from the scene of the scaffold, and the decisive phase in the rise of imprisonment?<sup>42</sup>

Where discord arises however is in the timeline, intentions and drivers of these changes. The debate itself has split into two main theoretical camps, broadly defined as those who saw the change as a product of an increasing Europe-wide 'civilizing process' and those who instead saw it as indicative of a burgeoning authoritarian control on the execution spectacle and criminal body. The former tending broadly to read reformers intentions against their contextual background of class antagonism and industrialization and the latter seeing, in reformers' stated intentions, an honest assertion of their motivations. In alluding to this divergent approach, Wilf noted that 'text and context, rhetoric and reality are juxtaposed as opposing varieties of evidence.'<sup>43</sup> To understand these divergent narratives of civilizing and control we must first seek their foundations.

The debate has its origins as early as the 1930s in the works of Rusche and Kirchheimer, who collated the growth in the 'social value of labour' as concomitant with a move away from symbolic physical punishment and towards deriving economic benefit from prison labour.<sup>44</sup> However, it was Foucault's *Discipline and Punish* that lit the touch paper in the mid 1970s.<sup>45</sup> Foucault's seminal work opened with a direct comparison between the brutal public dismembering of Damians for the attempted Regicide of King Louis XV, in 1757, and a list of house rules for young prisoners in Paris in the 1830s. The comparison was indicative of his wider argument

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<sup>42</sup> R. J. Evans, *Rituals of Retribution: Capital Punishment in Germany 1600-1987* (Oxford, New York: Oxford University Press, 1996), pp. 894-895

<sup>43</sup> S. Wilf, 'Imagining Justice: Aesthetics and Public Executions in Late Eighteenth-Century England,' *Yale Journal of Law & the Humanities* 5 (1) (2013) p. 53.

<sup>44</sup> G. Rusche & O. Kirchheimer, *Punishment and Social Structure* (Transaction Publishers, 2003). Evans asserted that the limited impact of these works was owing in large part to their 'crude and implausible...economic reductionism.' Evans, *Rituals of Retribution* p. 8.

<sup>45</sup> M. Foucault (1979), *Discipline and Punish: The Birth of the Prison* trans. Alan Sheridan (London: Penguin, 1995).

that the late eighteenth and early nineteenth century saw 'the entire economy of punishment...redistributed.'<sup>46</sup> In the growth of the prison and innovations like Bentham's Panopticon, he saw increasing state control and an emergent political desire to manage both the criminal's body and soul. In as much, the observable changes in the economy and presentation of punishment were not motivated by any enlightened notion of increasing horror at public brutality, but instead were an attempt to bring an order to a penal system that had lost its deterrent effect.

One curious anomaly in Foucault's work is his blind spot for his resident country's progress. In a work positing that a dramatic shift took place from a system of punishment with torture of the body at its core to one where punishment became 'the most hidden part of the penal process,'<sup>47</sup> the awkward detail that the guillotine was being used in public in France as late as 1939 appears curiously absent from the text.<sup>48</sup> Indeed, arguments have been made that it was its very publicity that led to its demise; leaked stills from a surreptitiously filmed recording of Eugen Weidmann's 1939 execution made numerous French Papers and led to an insurmountable widespread call for change from a 'public scandalized by their own violence.'<sup>49</sup>

The historiographical debate was given new ardour through the work of, amongst others, Pieter Spierenburg. Spierenburg's totemic text, focusing predominantly on Amsterdam in the seventeenth and eighteenth centuries, argued that the steady decline of publicly executed punishments were a result of the emergence of the modern nation state and thus symptomatic of Elias' 'civilizing theory'.<sup>50</sup> Through his

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<sup>46</sup> M. Foucault, *The Spectacle of the Scaffold* (Penguin, 2008), p. 7.

<sup>47</sup> Foucault, *Discipline and Punish*, p. 9.

<sup>48</sup> The decision to end public executions in France was taken at a Council of Ministers meeting on June 24<sup>th</sup> 1939. From henceforth they took place within the prison walls. Reporting on the decision *The Times* noted the shock at the 'disgraceful scenes' at Wiedmann's execution and believed that, in part owing to this, the measure would be 'no doubt be generally welcomed'. 'No Public Executions in France', *The Times*, June 26<sup>th</sup>, 1939. This decision marked the end of an earlier transition in Paris, from executions taking place 'on the sidewalk at the entrance to the Grand Roquette Prison' to the 'vicinity of La Sante Prison farther from the centre.' Gordon Wright, *Between the Guillotine and Liberty: Two Centuries of the Crime Problem in France* (USA: Oxford University Press Inc, 1983) p. 166.

<sup>49</sup> Stassa Edwards, 'Photographing the Guillotine', The Appendix Stassa Edwards, accessed Vol 2 (4) (October 14<sup>th</sup>, 2014) Accessed March 11<sup>th</sup> 2016 <http://theappendix.net/issues/2014/10/photographing-the-guillotine>

<sup>50</sup> P. Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience* (Cambridge: Cambridge University Press, 1984) Spierenburg's This early work called for further Europe wide analysis to justify a broader conclusion, a



questioning of the Foucauldian narrative Wilf has credited him with 'swinging the historiographic pendulum back towards the traditional account of late eighteenth-century discontent with public executions.'<sup>51</sup> The curiosity of this new line of argument was the extent to which it owed its theoretical underpinnings to a thinker who had made, at best, cursory remarks on execution. Spierenburg saw merits in the work of German Sociologist Norbert Elias and his theory of a 'civilizing process.'<sup>52</sup> Through a detailed study of social manners and behaviours, Elias purported that a 'civilizing process' could be witnessed from the medieval period up until the twentieth century. In as much, Elias' work was an attempt to recover the liberal values of progress, so central to the enlightenment, and derided by the Nazi regime in his native Germany by whom he had been exiled.<sup>53</sup> What is remarkable, given the prominence of his study in our understanding of the changing nature of punishment though, is how little reference Elias made to capital punishment, with only 'brief remarks' about, amongst other things, the 'gallows in the medieval world of the knight.'<sup>54</sup> Elias's work is far more closely concerned with the intimate; table manners, nose blowing, social airs and graces. In essence, its focus is the rise of self-control as a bourgeois ideal.

Although predominantly focusing on the Dutch experience of punishment Spierenburg, through an Eliasian prism, argued that these observable changes in punishment were in line with the growth of the modern state. Concomitant with this growth was a burgeoning 'conscience formation' in which divergent groups in these new states came to 'empathise' with the suffering of others.<sup>55</sup> Far from the offshoots of an increasing control on the criminal body, Spierenburg saw these adaptations as being indicative of a European wide civilizing process. Similarly Hunt argued of forms of torture in Europe more generally, that by the late eighteenth century 'long-held notions of sacrificial punishment and truth through pain had withered under the

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call that Spierenburg believes has since been met and justifies his earlier assertion. Spierenburg, 'Foreword' in *A Global History of Execution*.

<sup>51</sup> Wilf, 'Imagining Justice,' p. 52

<sup>52</sup> Elias, *Civilizing Process*.

<sup>53</sup> Evans, *Rituals of Retribution*, p. 891.

<sup>54</sup> J. Pratt, 'The Civilizing Process and Penal Development in Modern Society', *Sociological Review Monograph* 50 (2) (June, 1999), pp. 271-296. p. 221

<sup>55</sup> Spierenburg, *The Spectacle of Suffering*, pp. 149-152.

pressure of new experiences of the body.<sup>56</sup> Arguably, though it was Spierenburg and those influenced by Elias that came to dominate the historiography over the more cynically-minded advancers of Foucauldian theory. In one sense this dominance owed much to the theoretical elasticity of the civilizing process.<sup>57</sup> Elias asserted that the process itself has two directions 'forward and backwards', the latter being brought on by dramatic outside forces, amongst them war, catastrophe and dramatic social change.<sup>58</sup> This has allowed for counter narrative to become evidence for the cause.<sup>59</sup> Evidence of this can be seen in the work of pathbreaking work of Garland, amongst others, where examples such as the aforementioned lateness of France's ending of public punishments become merely 'laggard participants' in a wider 'general process' of change across Europe as opposed to an exception to the rule.<sup>60</sup>

More recent studies have sought to look in detail at the nuanced and subtle changes in the presentation of execution itself. In his work on the presentational changes to execution in London, Wilf promoted an 'aesthetic theory' to allow an interpretation of the 'spatial organization of public executions as a readable text.' He asserts that the increasing privacy of execution across the late eighteenth was the by-product of disappointment at the spectacles 'didactic effectiveness.' He saw the move of execution from Tyburn to Newgate in 1783 and with it the removal of public procession, as indicative of a wider transfer from a 'spectacle designed to bombard the visual senses' to an execution that instead aimed to 'influence the imagination.'<sup>61</sup>

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<sup>56</sup> L. Hunt, 'The 18th-Century Body and the Origins of Human Rights', *Diogenes*, 51 (3) (2004), pp. 41–56. p.51.

<sup>57</sup> Testament to the elasticity of the theory can be seen in its use, in the same journal edition, to argue both for a long-term decline in homicide and also for its complete reversal, post 1960's. P. Spierenburg, 'Violence and the civilizing process; does it work?' *Crime, History & Societies*, 5 (2) (2001); Helmut Thome, 'Explaining Long Term Trends in Violent Crime', *Crime, History & Societies*, 5 (2) (2001), pp. 69–86.

<sup>58</sup> This response was given in an interview by Norbert Elias to *Der Spiegel*. 'We Are the Late Barbarians', *Der Spiegel*, 23<sup>rd</sup> May 1988, <http://www.spiegel.de/spiegel/print/d-13529892.html> cited in Jonathan Fletcher, 'Towards a Theory of Decivilizing Processes', *Amsterdams Sociologisch Tijdschrift* 22 (2) (October, 1995), p. 288.

<sup>59</sup> J. Pratt, 'Civilizing and Decivilizing Characteristics of the Contemporary Penal Field,' in Norbert Elias and Empirical Research in T. S. Landini & F. Dépelteau (eds.) *Norbert Elias and Empirical Research* (US: Palgrave MacMillan, 2014), p. 63.

<sup>60</sup> D. Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Oxford & New York: Oxford University Press & Harvard University Press, 2010), p. 107.

<sup>61</sup> Wilf, 'Imagining Justice,' p. 52, 53, 75. By Wilf's own admission the argument relies on traditionally 'fragmentary and obscure sources', however it is a crucial addition to the historiographical debate and his assessment that by 1780 the criminal justice system increasingly 'relied on what remained unseen but imagined' is, of London at least, hard to question.

Similarly, writing before Wilf of nineteenth century New York executions, Maddow noted a tri-partite change in executions ('spatially', 'geographically' and 'epistemologically') effectively moving them from the 'domain of first hand everyday experience...to the sphere of abstract consciousness.'<sup>62</sup> These transfers identified by Wilf and Maddow sit in line with the intentions of earlier reformers in the period most notable amongst them Henry Fielding. Writing in 1751 Fielding wrote of execution that 'a murder behind the scenes, if the poet knows how to manage it, will affect the audience with greater terror than if it was acted before their eyes.'<sup>63</sup> To some degree neither is necessarily saying anything radically new from Foucault who talked of a shift in which punishment became, 'the most hidden part of the penal process...its effectiveness...resulting from its inevitability, not from its visible intensity.'<sup>64</sup> The irony here in both arguments being that they rely on an element of inevitability in a justice system in which uncertainty and myriad opportunities for commutation reigned, Gatrell asserting that between 1805-1840 the percentage of capital convicts pardoned in England and Wales never dropped below 81%, with over 90% of all death sentences commuted in the 1820s.<sup>65</sup>

More recently Devereaux, focusing on the recorded intentions of London Sheriffs Bernard Turner and Thomas Skinner in moving execution in from Tyburn to Newgate in London, has sought to reassess the intentions of these reformers. Devereaux posited that the 1783 transfer is better understood as 'one of the last stages of substantial innovation in an older system of thinking about capital punishment' as opposed to the first step on the path to the private executions of 1868. In as much, Wilf and Devereaux can find agreement, the latter asserting that the 'hermetic world' of execution post 1868 rendered 'punitive aesthetics...obsolete.'<sup>66</sup> To Smith the

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<sup>62</sup> M. P. Maddow, 'Forbidden Spectacle: Executions, the Public, and the Press in Nineteenth Century New York,' *Buff. L. Rev* 461 (43) (1995), p. 478.

<sup>63</sup> Fielding cited as his inspiration the murder of the King in Shakespeare's *Macbeth*. Fielding noted that when 'Garrick acts the part, it is scarce an hyperbole to say, I have seen the hair of the audience stand an (sic) end. Terror hath, I believe, been carried higher by this single instance, than by all the blood which hath been spilt on the stage.' Henry Fielding, *An Enquiry Into the Causes of the Late Increase of Robbers, & c.* (London: A. Miller, 1751), p. 193. Accessed 19th September, 2018 <https://archive.org/details/anenquiryintoca00fielgoog>

<sup>64</sup> Foucault, *Discipline and Punish*, p. 9.

<sup>65</sup> Table 2. 'Capital Convictions and executions England and Wales, 1805-1840', Gatrell, *The Hanging Tree*, p. 617.

<sup>66</sup> Wilf, 'Imagining Justice,' p. 78. The 'hermetic world' that Wilf speaks of would seem to imply the inability of information on the execution to leak outside the prison walls. However, as will be shown in chapter five, this was far from the case in the North East of England in the later nineteenth century.

transfer from Tyburn to Newgate was nothing short of a 'paradigm shift in the way public executions were managed.'<sup>67</sup>

Whilst there has been detailed critical interrogation into the intentions behind the change of execution at Tyburn, there has been a positive silence on its application outside the environs of London. Indeed, as is all too often the case with scholars of the gallows, it is presumed that where London led the provinces eventually followed. The irony being that in works such as Wilf's, which critiques the 'civilizing' notion, the throwaway assertion that 'provincial assizes followed Newgate's lead' simply reasserts the teleological narrative of 'civilizing' and progress.<sup>68</sup> In this vein, the steady transition across the country of executions moving from unremarkable open land to the exterior of centrally located prisons can be seen as a slow, untrammelled wave of London-led progress; its laggard application in particular areas being perfectly concurrent with the elasticity of a wider 'civilizing' narrative, as opposed to counter to it. Even in counter narratives that argue changes at Tyburn are 'better understood as one of the last stages of substantial innovation in an 'older system' of punishment, the model of change emanating from the centre is invoked.<sup>69</sup> In his detailed study of the reformation of execution at Tyburn in 1783, Devereaux cites the changes in Chelmsford, Oxford and Liverpool in 1785, 1787 and 1788 respectively as being examples of areas that 'followed London's lead.'<sup>70</sup> In one sense this is an uncontroversial assertion as a transition from open land executions to ones outside the walls of a central prison were eventually observable by 1850 in almost all regions of the county. However, little has been done to address the motivating factors behind these changes in regions outside of London. Indeed, in the early work that has been done Poole noted, regarding the comparatively rare phenomenon of crime-scene executions, that the provincial experience was 'protracted and patchy' and creates a far more 'uneven' picture of change. However, the theoretical elasticity of 'civilizing' rears its head again as he stops at dismissing it entirely, positing that recognising

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<sup>67</sup> G. T Smith, 'Civilized People Don't Want to See That Sort of Thing: The Decline of Physical Punishment in London', 1760-1840 in Julie Strange (Ed), *Qualities of Mercy: Justice, Punishment, and Discretion* p. 29.

<sup>68</sup> Wilf, 'Imagining Justice,' 76.

<sup>69</sup> S. Devereaux, 'Recasting the Theatre of Execution: The Abolition of the Tyburn Ritual,' *Past & Present* 202 (1) (February, 2009), p. 172.

<sup>70</sup> Devereaux, 'Recasting', p. 140.

‘nuances and regional variations’ helps us better understand the complexity of Elias theory.<sup>71</sup>

It is into this gap that this section of the thesis enters, offering a regional perspective on the changing presentation of punishment. Focusing firstly on execution between 1800-1868 it will seek to show that there was no one unifying experience of change in the North East region and the presentation of execution transformed over dramatically different timelines and for numerous and differing reasons. As such the execution experience in the nineteenth century differed markedly in neighbouring localities. It will also show that of the limited previous studies done of the North East, key errors have been made in the timelines of change, most notably in executions undertaken for Northumberland’s prisoners at Morpeth.<sup>72</sup> These errors have led to erroneous assertions that Northumberland was the last of the three areas surveyed to adopt a more centralised, prison based execution, when in fact it was the first of the three regions. Similarly, it has unhelpfully placed Newcastle and Northumberland as examples of a wider disconnected and ‘laggard’ North East.

In assessing when and why changes were enacted to the execution spectacle similarities with the metropolis can be seen in Durham’s transition in 1816, most notably its wishes to alleviate traffic amongst other things. Whilst in Northumberland, during the nineteenth century we see a number of changes and experimentation with the execution spectacle, all of which happen far earlier than previously reported. However, in the case of Newcastle, the latest in the region to change, the motivations for the transition were far more complex. As late as 1844, some six decades after the transition from Tyburn to Newgate, Mark Sherwood was being ridden through the centre of Newcastle, crowds lined with thousands of spectators to his eventual death on the open land of the Town Moor’s race course. This in itself hides a subtler change in the apparatus of punishment in which the new drop technology, so often linked with the move to prison wall executions, was implemented at a wholly public execution. The delay in Newcastle’s transition arose from a combination of an insufficient prison architecture, the lack of execution as a

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<sup>71</sup> Poole, ‘Crime-Scene Executions’, p. 94.

<sup>72</sup> Bentley, *Capital Punishment*, p. 100. As will be highlighted in chapter two Bailey’s earlier study misattributed the dates of Northumberland’s transfer of the execution site.

pressing administrative concern and fear of the execution crowd heightened by a catastrophic crowd crush in Nottingham all playing important roles. This thesis will assert that in Newcastle the practice of London was, if a factor at all, a minor one at best.

## **Post-Mortem Punishment**

The final half of this thesis will seek to redress a hitherto cavernous gap in the literature on capital punishment; namely the preternatural exclusion of post death punishment. This has, in the words of one leading modern historian, meant that the end point of even the most celebrated studies of the gallows have, 'tended to be the hanging tree, rather than the dissection table.'<sup>73</sup> Until recent years this limited focus on the criminal body after death had inadvertently created the impression that the role of the post-death punishment was both a practical and an ideological afterthought, a notion which the concluding chapters will seek to redress. Both dissection and gibbeting or hanging in chains were an intrinsic part of the death sentence as prescribed by the 1752 Murder Act, intended to add a 'further terror and infamy' to the punishment for the crime of murder.<sup>74</sup> Moreover, these were often the most feared part of a death sentence themselves, more feared than the gallows and in the case of gibbeting or hanging in chains, the most long-lasting visual symbol of justice enacted.<sup>75</sup>

Until recently, with the exception of Linebaugh's work on the popular reactions against surgeons at the gallows and Ruth Richardson's groundbreaking work on death, dissection and the social and cultural context in which the Anatomy Act of 1832 was introduced, comparatively little work had been done on the punishment of the criminal body after death.<sup>76</sup> Thankfully, a groundbreaking quinquennial and interdisciplinary project, completed during the writing of this thesis has made great

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<sup>73</sup> R. Ward, 'The Criminal Corpse, Anatomists, and the Criminal Law: Parliamentary Attempts to Extend the Dissection of Offenders in Late Eighteenth-Century England,' *Journal of British Studies* 54 (1) (January 2015), p. 66.

<sup>74</sup> The Murder Act 1752 (25 Geo II c 37)

<sup>75</sup> S. Tarlow & Z. Dyndor, 'The Landscape of the Gibbet,' *Landscape History* 36 (1) (January, 2015), p. 75.

<sup>76</sup> P. Linebaugh, 'The Tyburn Riot Against the Surgeons', in Hay et al. *Albion's Fatal Tree* pp. 65-118; Ruth Richardson, *Death, Dissection and the Destitute: The Politics of the Corpse in Pre-Victorian Britain* (London: W&N, 2001).

strides in addressing this gap in the literature. It has led to a surge in works that can be loosely termed as part of the Medical Humanities, focusing on the multifarious uses and roles of the criminal corpse after death. As such the explorations undertaken were into largely uncharted territory and testing both methodological and research strategy boundaries offering both new and exciting findings and methodological approaches.<sup>77</sup>

It is alongside this burgeoning field of enquiry that these closing chapters will sit, assessing the experience of the executed body after death in the North East. The first two chapters will address the public punishment of the body, during the period between the 1752 Murder Act and the 1832 Anatomy Act and will assert that punishments of dissection and hanging in chains, as with hangings themselves, were both rare and, as with executions, became increasingly unreliable as examples of the state's authority.<sup>78</sup> Furthermore it will be shown that in labelling both crudely as public punishments, the widely different audiences that these punishments attracted have been unhelpfully overlooked. With particular reference to the practice of gibbeting, it will be shown that the message intended by the authorities was often diluted, transmogrified or deliberately transgressed through popular protest, robbing this symbol of 'justice enacted' of its potency. This has further implications for the predominant discourse that the 1832 *Anatomy Act* and 1834 *Hanging in Chains Act*, that removed these punishments, were indicative of a wider civilizing movement against brutal and brutalizing public punishments. Instead this thesis will argue that they were bills based as much on medical necessity and a realization of the impotence of the spectacle created, respectively.

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<sup>77</sup> *Harnessing the Power of the Criminal Corpse* Leicester University & Wellcome Trust. Accessed 14<sup>th</sup> August, 2018 [www.criminalcorpses.com](http://www.criminalcorpses.com). This multi-disciplinary project has broken new ground on the post-mortem treatment of the criminal body. Of particular note is the radical methodological approach in the work of Elizabeth Hurren in assessing the post-mortem punishment of dissection. Elizabeth T. Hurren, *Dissecting the Criminal Corpse* (London: Palgrave Macmillan UK, 2016), <http://link.springer.com/10.1057/978-1-137-58249-2>. Similarly, King and Tarlow's & Lowman's work on punishing the criminal corpse and the punishment of gibbeting, respectively, have both been vital new contributions to the historiography. Peter King, *Punishing the Criminal Corpse, 1700-1840: Aggravated Forms of the Death Penalty in England* (Palgrave MacMillan, 2017); Sarah Tarlow & Emma Battell-Lowman, *Harnessing the Power of the Criminal Corpse* (Palgrave MacMillan, 2018). During the undertaking of this PhD I was employed as a contributor on this project. The extent and breadth of the output is detailed here <https://www.criminalcorpses.com/publications-output>

<sup>78</sup> Although the punishment of Hanging in Chains remained on the statute book until 1834, it's last application was in 1832 for the gibbeting of James Cook at Leicester.

The final chapter will argue that in the early work on post death punishment, historians have often overlooked the most potent part of the Murder Act, namely the refusal of burial. This punishment created deep social scarring and continued unabated, long after the removal of both dissection and gibbeting, thus necessarily complicating any simple notion of increasing civilization after these acts' removal from the statute. It will be shown that the refusal of burial, was actually exacerbated and further entrenched by the 1832 Anatomy Act and 1834 Hanging in Chains Act, creating a new legal precedent where burial of the body behind the prison walls meant recovery of the body was refused for all crimes, not just murder, and the condemned corpse became the property of the state in both Life and Death. This punishment, in effect, asserted a new level of state ownership over the criminal body in perpetuity.

## **Methodology and sources**

The focus of this study is the history of capital punishment between 1800-1878 and post-mortem punishment in the North East of England between 1752-1878. In justifying the approaches undertaken, I will outline three key areas that need addressing; the region sampled, the sources applied and the timeline chosen.

The central focus of this study is a select sample of North East counties from the Northern Circuit (Newcastle Upon Tyne, Durham and Northumberland). The region offers itself as a valid focus for study as whilst the its violent border history has been extensively covered, the extent of crime and cultures of punishment have been relatively neglected, most notably in the nineteenth century. Located nearer to Scotland than to London, it offers itself as a curious geographical counterpoint between the two, a penological weathervane for future study on the spread of the central state both North and South of the border. However, in any purported regional study one runs the risk of presenting an area of singular identity distinct from others and with particular characteristics. Previous studies into this territory have carried similar cautions, noting the questionable grounds on which any such claim can be made.<sup>79</sup> Whilst there are undoubtedly unifying regional characteristics in the areas

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<sup>79</sup>Previous studies of crime and execution in the North East have noted how it is 'customary to treat the three counties as a region' whilst also acknowledging their being no a priori reason to assume a



chosen, this study seeks to make no such claims of a unified regional identity. Instead, in locating regional practices of execution it aims to convey that neighbouring counties and towns underwent radically different changes and along markedly different timelines. These changes were as much informed by singular instances specific to their locale as they were by each other or outside forces. In as much, the critical stance taken earlier in this chapter to London centric models too often being loosely applied across the 'provinces' will apply both ways. The study does not seek to show that what we see in the North East therefore entirely negates the London dominated historiography of the gallows in lieu of a 'North East' narrative. Instead it offers itself as another small piece in the patchy jigsaw of English penal practice.

Dating back to the late twelfth-century the Northern Circuit, by the time of the period in focus, comprised of the counties of Cumberland, Durham, Lancashire, Northumberland, Westmorland and Yorkshire, together with the County of the City of York and the Counties of the towns of Newcastle-upon-Tyne and Kingston-Upon-Hull. Whilst acknowledging the complex and intricate initial history of the circuit, Sharpe has argued that the eventual settlement of these five northern shires, and latterly Durham, into a single 'unit of itinerant justice' was 'wholly predictable.' Across the period in focus numerous pressures from expanding population and increasing urbanisation led to calls for its break-up or recategorization, however this delineation of the counties remained largely unchanged until 1876 at which point Northumberland, Durham and Yorkshire were siphoned off to create a North Eastern Circuit; a division that some have argued sustained them long into the twentieth century.<sup>80</sup>

### **Defining a region**

No region is static; the distinctive features of an area (demographic, economic, geographical and political) are subject to constant change and fluctuations. Writing of the North East In the early eighteenth century historians argued that it appeared

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convergence as the three counties operated in distinctive ways as judicial organisations, particularly in the eighteenth century. Rushton and Morgan, *Rogues, Thieves* p. 7.

<sup>80</sup> Cockburn, 'Northern Assize', p.122, 130.

'alien' to the rest of the population of England and 'remote from the areas of economic growth.'<sup>81</sup> However, by the end of the nineteenth century the region had undergone a dramatic transformation turning what had formerly been a 'society of small scattered agricultural communities' into an 'industrialized and urbanized society'.<sup>82</sup> Whilst, to a large degree, this dramatic transformation was characteristic of the nineteenth century more broadly, it is essential to obtain a picture of its effects in the North East to understand the local picture in relation to penal policy.

## Geography:

Earlier studies have noted how the natural borders of the North East have arguably given it more 'validity' as a region than most other areas of England.<sup>83</sup> All three counties shared a geographically definitive and economically advantageous eastern sea border (Newcastle's via the River Tyne). Another clear demarcation was Northumberland's Northern boundary; being as it was the border between England and Scotland. However, to the west the counties boundaries were less clearly defined, most notably Durham's which was marked by 'black naked and barren regions.'<sup>84</sup> Similarly of Northumberland Sharpe noted the administrative problem of maintaining law across the 'traditionally lawless' border lands and some of the 'countries wildest terrain.'<sup>85</sup> In his study of the counties in 1827, McKenzie recorded of Elsdon in Northumberland, the siting of William Winter's Gibbet detailed in chapter five, that 'the perspective in almost every situation is dreary, bleak and horrific.'<sup>86</sup> In some ways though the geographic identity of the region is a much a story of rivers as it is one of administrative boundaries; the northern and southern most extremities of the areas sampled in this thesis are both defined by the rivers that cross them; the

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<sup>81</sup> Morgan and Rushton, *Rogues*, p. 9; D.J. Rowe, 'The North East', in F.M.L. Thompson (ed.), *The Cambridge Social History of Britain 1750-1950* Vol 1, (Cambridge: Cambridge University Press, 1990). p. 418.

<sup>82</sup> Norman McCord, *North East England: An Economic and Social History*, (Batsford Academic: 1979), p. 25.

<sup>83</sup> Rowe, 'The North East', p. 415.

<sup>84</sup> E. Mackenzie, M. Ross, *An Historical, Topographical, and Descriptive View of the County Palatine of Durham* Vol 1, (Mackenzie & Dent: Newcastle, 1834), p. lxiv. Accessed online 25 November 2018 <https://play.google.com/books/reader?id=0ThNAAAAMAAJ&>

<sup>85</sup> Cockburn, 'Northern Assize', p.122.

<sup>86</sup> 'A correspondent' cited in E. McKenzie, *An Historical, Topographical, and Descriptive View of the County of Northumberland &.*, Vol II (Mackenzie and Dent: Newcastle Upon Tyne, 1825) p. 485. Accessed online 11<sup>th</sup> September 2018 <https://play.google.com/books/reader?id=-RtNAAAAMAAJ&>

Tweed in the case of Northumberland and the Tees in Durham; with both counties bisected by the River Tyne on whose Northern banks Newcastle is built.

### **County Palatine of Durham.<sup>87</sup>**

Originally included within the confines of twelfth century Northumberlandshire, a product of the late 'shiring' of Northern England following Northern invasion, Durham's independence was disputed throughout the c13th. Eventually the County Palatine of Durham emerged as the result of an ongoing dispute between the Bishops of Durham and the Crown, in large part enabled by the fact that these early attempts at shiring were never formally constituted.<sup>88</sup> At its Northern most points the county stretched to the Southern banks of the river tyne with Gateshead and Jarrow its most prominent northern towns. The county encompassed several other areas of note, amongst them Stockton on Tees and Darlington to the South and Sunderland to the east. Anomalies of the ancient Bishopruck of the county also meant that Durham had administrative control of parts of the Eastern coast of Northumberland, known as Islandshire, Bedlingtonshire and Norhamshire until 1844 when it was transferred back under Northumberland's control; this meant that for some, attending court in Durham was a very significant journey.<sup>89</sup>

### **Newcastle:**

Positioned on the Northern banks of the river tyne, directly facing Gateshead in County Durham, Newcastle in 1750 was a walled town; a legacy of centuries earlier Scottish invasion, (see earlier maps). However, during the nineteenth century it expanded without the confines of its city walls, which were steadily demolished across the latter part of the century.<sup>90</sup> Growth was predominantly along the banks of the Tyne, both a product of the needs of industry and the restriction of the Town Moor to the immediate North of the town's walls (a centuries old area of common

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<sup>87</sup> For a detailed history of the County Palatine see Palatinate of Durham Records, DUSC. Accessed online 15<sup>th</sup> May 2018 [http://reed.dur.ac.uk/xtf/view?docId=ark/32150\\_s13j333226g.xml](http://reed.dur.ac.uk/xtf/view?docId=ark/32150_s13j333226g.xml)

<sup>88</sup> For a detailed history of Durham's place in the creation of the Northern Circuit see Cockburn, 'Northern Circuit', p. 127.

<sup>89</sup> The Counties (Detached Parts) Act 1844 (7 & 8 Vict. c.61)

<sup>90</sup> "Newbottle - Newcastle-upon-Tyne," in Samuel Lewis (ed.) *A Topographical Dictionary of England*, Samuel Lewis (S Lewis: London, 1848), pp. 379-389. *British History Online*, accessed September 24, 2019, <http://www.british-history.ac.uk/topographical-dict/england/pp379-389a>.

land on which Freemen of Newcastle have cattle grazing rights).<sup>91</sup> Newcastle's steady growth saw it expand from its ancient walled boundaries and subsequently its population grew out of a combination of economic growth and the extension of its administrative boundaries by the 'far reaching' Municipal Corporations Act of 1835 (the boundary extended to all sides to include the 'several townships' of Byker, Heaton, Jesmond, Westgate and Elswick).<sup>92</sup>

### **Northumberland:**

Eighteenth century Northumberland, in stark contrast to the relatively compact and diminutive Newcastle, spread over a vast area stretching from the northern edges of Newcastle's Town Moor to the Scottish border (covering Alnwick, Elsdon, Morpeth and Rothbury). To its immediate west it abutted with the counties of Cumberland and to its south with the Palatine of Durham (interrupted by the Tyne and Newcastle). Despite steady demographic growth throughout the period, it remained a sparsely populated region. Indeed, to this day, it remains so with findings from the 2011 census recording Northumberland's population density at 63 residents per square kilometre; the lowest of any local authority in the North East and seventh lowest in England.<sup>93</sup> This was in large part a legacy of the large estates and its predominantly feudal nature which proved a 'considerable barrier to...change.'<sup>94</sup>

### **Economy:**

Previous histories of the region have cautioned against a uniform or simple construction of the growth in the period, arguing convincingly that changes varied from 'place to place, from industry to industry and from time to time.'<sup>95</sup> However, one thing is clear, by the end of the period sampled the region had undergone a radical

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<sup>91</sup> Ken Smith and Tom Yellowley, *The Town Moor; Newcastle's Green Heart*, (Newcastle: Tyne Bridge Publishing 2014), p. 10.

<sup>92</sup> G. B. A. M. Finlayson, 'The Politics of Municipal Reform, 1835', *The English Historical Review* Vol. 81, No. 321 (Oct., 1966), pp 673-692 (p.673); N. McCord and D. J. Rowe, 'Industrialisation and Urban Growth in North-East England', *International Review of Social History*, 22, 1 (April, 1977), pp.30-64 (p.42).

<sup>93</sup> Findings of 2011 Census summarised in *Know Northumberland – 2011 Census Key Statistics for Northumberland*. Accessed online 17<sup>th</sup> May 2019.

<https://www.northumberland.gov.uk/NorthumberlandCountyCouncil/media/Northumberland-Knowledge/Document%20library/KnowNland2011CensusKeyStatisticsNewsletter.pdf>

<sup>94</sup> D.J. Rowe, 'The Social and Economic Characteristics of Northumberland in the 1880s' in W.S.F. Pickering (ed.) *A Social history of the Diocese of Newcastle 1882-1982*, (Stocksfield: Oriel Press, 1981), p. 5.

<sup>95</sup> McCord and Rowe, 'Industrialisation and Urban Growth', p.31.

transformation economically, demographically and geographically with rapid industrialisation leading to unprecedented population growth, manifested largely in substantive urbanisation.

From 1750 until the early nineteenth century agriculture was 'by far the most significant' occupation in the North East. Previous histories have noted how the region in this period arguably more closely resembled 'lowland Scotland than Southern England';<sup>96</sup> indeed, in its advanced agricultural practices the North East was often the envy of regions of Scotland.<sup>97</sup> However, much as the rivers defined some of its borders, so they played a vital role in its economic development. Perhaps nowhere was this more apparent than in Newcastle, where its comparatively diminutive size, dramatically underplayed its importance in the region. Writing in 1827 Parsons claimed that 'its commercial importance, opulence, and population may be justly stiled the capital of the whole district comprehended between the Tees and the Tweed.'<sup>98</sup> Chief amongst the reasons for this distinction was its legacy of coastal shipping, most notably in its coal trade to London.

Of all the industrial developments in the region across this period, McCord has convincingly argued that the region's 'buried inheritance' of coal was 'far and away the most significant.'<sup>99</sup> Writing in 1834 McKenzie and Ross stated that '*The Newcastle Coal Field* is by far the most important of all those at present worked in England, both as regards the quantity produced and their quality.'<sup>100</sup> Even as early as 1750 the Great Northern Coalfield accounted for 'around 25-30 percent of British output'.<sup>101</sup> Although vastly influential, the exploitation of coal was not the sole reason for the economic growth and demographic change in the period. Advancements such as rail meant that previously inaccessible areas, became important hubs for trade.<sup>102</sup> Furthermore, certain areas grew based on their specialities in other industries such as Sunderland for shipbuilding, whose port ranked as one of the country's major

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<sup>96</sup> Morgan and Rushton, *Rogues*, p. 9.

<sup>97</sup> McCord, 'North East England', p. 26.

<sup>98</sup> William Parsons and William White, *History, Directory, and Gazetteer, of the Counties of Durham and Northumberland* & Vol.1 (W. White & co: Leeds, 1827), p.xiii. Accessed online 17<sup>th</sup> March 2018 <https://books.google.co.uk/books?id=uqM3AAAAAYAAJ&>

<sup>99</sup> McCord, 'North East England' p. 13, 36

<sup>100</sup> McKenzie and Ross, *An Historical*, p.64.

<sup>101</sup> Rowe, 'North East England', p.420

<sup>102</sup> McCord and Rowe, 'Industrialisation and Urban Growth', p. 30.

harbours by 1817.<sup>103</sup> Similarly, in the second half of the c19th an iron industry already buoyed by the burgeoning 'world-changing' impacts in railways saw rapid expansion following exploitation of deposits in the Cleveland Hills; a jump from 5 percent to just shy of half of Britain's pig iron output between 1850 and the early 1870's.<sup>104</sup>

## Demography:

The true extent to which the dramatic changes in industry of the nineteenth century can be seen in the north east are best illustrated in the population growth figures and demographic changes that took place. Of the limited available pre census material, estimates of population noted that until the early nineteenth century the North-East's population growth rates were consistently below the national average with Newcastle the only town of 'any significance.'<sup>105</sup> In his reworked figures for eighteenth century England, Wrigley calculated the populations of Northumberland and Durham as remarkably similar in 1801 (Northumberland 134,119 in 1761 growing 25.12% to 164,412 by 1801) and Durham (128,275 in 1761 growing by 30.83% to 167,823 in 1801).<sup>106</sup> Although not directly accounted for until the 1801 census, as it was included in figures for Northumberland, Newcastle Upon Tyne was recorded as just over 30,000, however recent studies have noted that this was greeted with 'universal surprise' by residents and contemporary historians who believed it far bigger.<sup>107</sup> More recent studies have argued that the safest conclusion is that Newcastle accounted for between 15-20% of Northumberland's total population in 1801.<sup>108</sup> These comparatively limited rises in population were to change dramatically from the 1820s onwards, with each decades censural return recording growth above the

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<sup>103</sup> McCord, *North East England*, p. 50.

<sup>104</sup> M. Barke and P. Taylor, 'Newcastle's long nineteenth century: a world historical interpretation of making a multi-nodal city region.' *Urban History*, 42 (1), pp. 43-69 (p.47); Rowe, 'north-east', p.428.

<sup>105</sup> Rowe, 'north-east', p. 419.

<sup>106</sup> Figures are drawn from Table 5. Population growth in the English counties 1761-1801 in T. Wrigley, English county populations in the later eighteenth century, *Economic History Review*, Vol 60, 1 (February, 2007), pp. 35-69 (p.25). Table 5. 'Population growth in the English counties 1761-1801.' Wrigley also stated that owing to the peculiarities of the administrative boundaries there was a 'near certainty' that the 'true figures were somewhat higher.'

<sup>107</sup> J. Ellis, 'The 'Black Indies'. The economic development of Newcastle. C.1700- 1840', in R. Colls and W. Lancaster (eds.), *Newcastle upon Tyne: A Modern History* (Chichester, 2001), p. 15.

<sup>108</sup> A. G. Butle, "Disease, medicine and the urban poor in Newcastle-upon-Tyne, c. 1750-1850," (PhD diss., Newcastle University, 2012), p. 20.

national average until the end of the century and, in the case of Durham, often growing at twice the national average.<sup>109</sup> The rising demands of industry and the comparatively high wages offered in the region for coal mining made it a draw.<sup>110</sup> This rapid expansion was particularly marked in Newcastle and County Durham. Between the censural returns of 1801 and 1881 the populations of both grew four of five fold.<sup>111</sup> By contrast Northumberland's population, although frequently above the national average for growth figures, only saw a 130% increase in the same eighty year period. This period of 'unprecedented' growth was further marked by an increasing urban sprawl. In their 1827 account of Newcastle MacKenzie and Dent noted of the spread that 'the numerous buildings that now stretch out in various directions from Newcastle have been formed in consequence of the increasing security, knowledge, and opulence of modern times.'<sup>112</sup> Conversely, by the end of the nineteenth century some villages in Northumberland had experienced contractions in population with an increasingly rapid migration from country to town; most notably in the dramatic increase in employment along the North Tyneside belt, accounting for 36% of the population in 1801 and 61% by 1901.<sup>113</sup>

### Migration Rates and the Irish:

Whilst the population growth experienced in this period was principally the result of natural increase, inward migration played a significant role.<sup>114</sup> In the peak decades of

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<sup>109</sup> Rowe, 'north-east', p.426. For an understanding of Newcastle's growth in this period, in comparison to the global picture see, Barke and Taylor, 'Newcastle's long nineteenth century', pp. 43-69.

<sup>110</sup> Mood, J. W, "Employment, politics and the working-class women in north east England, c.1790-1914", (PhD diss., University of Durham), p.20.  
[http://etheses.dur.ac.uk/2687/1/2687\\_700.pdf?UkUDh:CyT](http://etheses.dur.ac.uk/2687/1/2687_700.pdf?UkUDh:CyT)

<sup>111</sup> The Census for England and Wales 1871 recorded Durham's population at 159,161 (1801) and 742,205 by 1871. Northumberland by contrast was recorded at 168,078 (1801) and 386,636 (in 1871). Owing to their absence in some census figures, for Newcastle more recent population estimates have been used and recorded a total population of 37,272 in 1801, which had grown to 163,668 by 1881. GB Historical GIS / University of Portsmouth, Newcastle upon Tyne District through time | Population Statistics | Total Population, A Vision of Britain through Time.  
[http://www.visionofbritain.org.uk/unit/10142714/cube/TOT\\_POP](http://www.visionofbritain.org.uk/unit/10142714/cube/TOT_POP). Date accessed: 29th November 2019

<sup>112</sup> Eneas Mackenzie. "The present state of Newcastle: Streets within the walls," in *Historical Account of Newcastle-Upon-Tyne Including the Borough of Gateshead*, (Newcastle-upon-Tyne: Mackenzie and Dent, 1827), 160-182. *British History Online*, accessed November 20, 2018, <http://www.british-history.ac.uk/no-series/newcastle-historical-account/pp160-182>.

<sup>113</sup> Rowe, 'north-east', p. 426. The population of the village of Ford had 1,903 inhabitants in 1801 but only 1,140 by 1901. 'Rowe, 'A social history', p.10. '

<sup>114</sup> Rowe, 'north-east', p.426.

growth between 1851-1881, during which the region at times grew at double the national rate (1861-71, 26.5% growth in north east against a national growth rate of 3%)’ outside of those who emigrated from neighbouring counties, the Irish made up the largest proportion of the foreign-born in Durham and Newcastle, with the Scotch a close second.<sup>115</sup> By the 1851 census Durham and Northumberland were behind only the North West, London and Yorkshire in their percentage of ‘Irish-born’ inhabitants; Durham’s Irish-born population growing in that time from 18,501 (4.7%) to a century peak of 37,515 (5.5%).<sup>116</sup> Signs of the strength of the Irish community in Newcastle are equally apparent, as evidenced by the ‘growing importance’ of the region to the Irish nationalist cause of Home Rule; Newcastle was selected as the venue for the Home Rule Confederation’s first conference.<sup>117</sup> Economically the Irish played a ‘particularly important’ role in the Ironmaking industry with notable communities in the Southern towns of County Durham (amongst them Hartlepool and Darlington).<sup>118</sup>

We have then a tale of two centuries. A relatively stagnant eighteenth century in which economic production and population stayed under national averages, set against a nineteenth century in which (particularly from the second half onwards, recent studies marking Newcastle as a ‘late industrial city’<sup>119</sup>) the North East came to play a substantial role in the nation’s growth and alongside that saw rapid demographic expansion, growing immigration and dramatic urbanisation.

### **Local law and order:**

There is a curious anomaly at the heart of any study of the North East’s assize system, namely its curious confluence of penal geography, yet distinctive neighbouring practices. Earlier studies have noted the ‘close cooperation’ imposed by the shared borders (particularly in the case of Durham’s Islandshire) whilst

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<sup>115</sup> Cooter, Roger, “The Irish in County Durham and Newcastle c.1840-1880”, (PhD diss., Durham University, 1972). p. 4. Accessed 17<sup>th</sup> March 2018 <http://etheses.dur.ac.uk/1907/>.

<sup>116</sup> D.M. McRaid, *The Irish Diaspora in Britain, 1750-1939*, 2<sup>nd</sup> edition (Basingstoke: Palgrave Macmillan, 2011), p. 56.

<sup>117</sup> Shannon, Stephen, “Irish Nationalist Organisations in the North East of England, 1890 – 1925” (PhD Diss., Northumbria University, 2013), p. 14.

<sup>118</sup> McRaid, *Irish Diaspora*, p. 56.

<sup>119</sup> Barke and Taylor, ‘Newcastle’s long nineteenth century’, p. 47.



simultaneously acknowledging that the separate counties' judicial architecture resembled 'precisely the kind of unsystematic legal system nineteenth century reformers set out to abolish'.<sup>120</sup> Similarly, earlier studies have highlighted a tendency in certain areas towards 'local and relatively cheap resolution' with recent national findings on execution highlighting parts of the region for their markedly high pardoning rate levels, suggesting them as evidence of a longer regional history of 'informal sanctioning systems', whilst simultaneously acknowledging the difficulty in testing as much.<sup>121</sup> Whilst a more detailed quantitative study is needed to assess the nature of cases that ended on the gallows in this period, it is worthy of note that numerous instances of the selective nature of sentencing are apparent. Reporting on the conclusion of the latest Northern Circuit assize sessions in 1816, the *Durham County Advertiser* recorded that although 24 prisoners were sentenced to death (10 at York, 6 in Durham and 8 in Newcastle), only one prisoner from each region was 'left for execution'. The paper reporting that 'mercy prevailed' and the prisoners unlucky enough to die were 'a dreadful warning to the depraved and dissolute to amend their lives.'<sup>122</sup>

## **Durham:**

Writing of Medieval Durham, Scammell proclaimed it to be the 'greatest liberty long established in private-hands.'<sup>123</sup> This legacy of administrative independence was arguably still apparent in the period in focus. Although expressly part of the Northern Assize Circuit, its separately kept records, palatinate exclusion from key central criminal legislation and distinct judicial reports on cases have been highlighted to indicate a more 'independent judicial framework.'<sup>124</sup> Across the period of the study numerous efforts were made to unify the county, most notably the Palatine Acts of 1836 and 1858, which effectively removed Durham's Palatine status, transferring powers from the Bishoprick to the Crown. Not all changes were well received, on reporting the passing of the County Police Acts that ultimately transferred

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<sup>120</sup> Morgan and Rushton, *Rogues*, p. 33.

<sup>121</sup> P. King. *Crime and Law in England, 1750–1840: Remaking Justice from the Margins* (Cambridge: Cambridge University Press, 2006), p. 36.

<sup>122</sup> *Durham County Advertiser*, 24<sup>th</sup> August, 1816.

<sup>123</sup> J. Scammell, 'The Origin and Limitations of the Liberty of Durham', *The English Historical Review* Vol. 81, 320 (Jul., 1966), pp. 449–473. p.449.

<sup>124</sup> Morgan and Rushton, *Rogues*, p. 19.

responsibility from the individual to officers of the state, the *Durham County Advertiser* feared that 'the police, whatever they may be at the outset, will degenerate into Government spies.'<sup>125</sup>

### **Newcastle and Northumberland:**

Under a ruling of Henry IV in 1400 Newcastle was granted status as both a town and county in its own right, simultaneously obtaining the right to its own sitting of the Courts of Assize, its own gaol and a sheriff.<sup>126</sup> The courts of assize for Newcastle sat at the Guildhall, on Sandhill at the foot of the town, whilst Northumberland assizes were undertaken a short walk away at the Moot Hall, with prisoners of Northumberland at Morpeth Prison and, following transfer for assize, Castle Keep in Newcastle. This caused several issues of transport with Prisoners of Northumberland brought from Morpeth gaol to be tried on Northumberland land in Newcastle.<sup>127</sup> Similarly, as will be shown in chapter two, this curious confluence of administrative boundaries and penal geography creates interesting anomalies for the historian of punishment; not least, when one considers trials and executions held on Northumberland land, within the confines of Newcastle or at its outer walls. One must question whether the residents of Newcastle more readily experienced the administration of Northumberland's executions than the people of Northumberland themselves. Similarly, a resident of neighbouring Newcastle was arguably more likely to have witnessed the Gateshead gibbet of Robert Hazlitt, , detailed in chapter five, than a resident of Southern Durham despite the criminal being sentenced at Durham's assizes. We have then a region of coherence and complications, of shared boundaries but distinct practices.

Much as the major economic developments in the region occurred in the nineteenth century, so did the chief developments in Law and Order. The rapid dismantling of the 'Bloody Code' in the 1830s, combined with the steady professionalisation of law enforcement, meant that law and order underwent perhaps its most dramatic

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<sup>125</sup> D. Philips and R. D. Storch, *Policing Provincial England 1829-1856: The Politics of Reform* (London and New York: Leicester University Press, 1999), pp.148-149.

<sup>126</sup> Redfern, *Shadow of the Gallows*, p. 8.

<sup>127</sup> J. R. Boyle, 'The Coming and Going of the Judges.' *Monthly chronicle of north-country lore and legend*; 3, 27 (May, 1889) pg. 222-227. p. 222.

transformation in centuries. This was most apparent in the nature of crimes that ended on the gallows, by the end of the 1830's a series of legislative Acts had led to a 'dramatic reduction' in capital statutes. Acts such as *The Judgement of Death Act* (1823) in which judges were given discretion to forgo the death sentence in all cases but treason and murder, helped engrain a long established popular sentiment, evidenced in the 1752 Murder Act, that murder was a crime in a category of its own.<sup>128</sup> Much as the role of legislation played a vital role in the changing nature of justice, previous studies have noted that as much attention should be placed on the role of the 'juries, local magistrates and other local decision makers.'<sup>129</sup>

Of the North East then, by the end of the period in focus, a judicial system that at its outset resembled 'precisely the kind of unsystematic legal system nineteenth century reformers set out to abolish' had ostensibly been brought into line, by a process of increasing uniformity and nationalisation.<sup>130</sup> Similarly, as chapter two illustrates, the nineteenth century North East also saw a radical overhaul in the architecture of punishment. By the end of the period sampled all the prisons in which capital offenders had been held at the start of the period had been demolished or decommissioned with new replacements built to more closely fit the requirements of a changing system of punishment. Alongside these architectural changes, advancements in communication and travel, through both the rail and telegram meant a mid-eighteenth century justice system often hidebound to delays by the notorious strictures and associated dangers of road travel between the region and the nation's capital had, by the late nineteenth century been far more comprehensively connected. This is perhaps best evidenced in chapter five by the rapid responses required of the Home Office in the 1870's regarding several executions at Durham; responses that were, in some cases, life-saving. However, as this study will show, for all the attempts to modernise and bring a uniformity to the administration of punishment, marked regional differences were still fully apparent throughout the period, from the incidence of punishment in given periods through to its changing presentation.

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<sup>128</sup> J. Gregory & J. Stevenson, *The Routledge Companion to Britain in the Eighteenth Century* (Routledge, 2012), p. 194.

<sup>129</sup> King, *Crime and Law*, p. 4

<sup>130</sup> Morgan and Rushton, *Rogues*, p.22.

## Crime:

Although the stated intentions of this thesis are not to provide a detailed quantitative study on the region's prosecutorial practice, a few words on the findings to date are useful. The geographic peculiarities of the region make any study of the three counties sampled particularly complex; not least because, for much of the nineteenth century Newcastle's statistical returns were included within Northumberland's. These peculiarities were often highlighted in wider national studies and sometimes led to their exclusion from broader figures. Indeed, in his national study of crime, published in 1851, Thomas Plint excluded Northumberland, Westmoreland and Cumberland from certain tabulations as he deemed them 'so peculiar and distinct in their organization, social and industrial, as only to perplex and disturb any broad general conclusions.'<sup>131</sup> Furthermore, whilst acknowledging the comparatively low crime rates of 'mining communities' like Durham, Cornwall and Northumberland as a 'phenomenon worthy of a close analysis' he simultaneously concluded that 'the materials for which are....not very apparent.'<sup>132</sup>

Despite the complications in assessing the region's criminality, what is clear is that the counties sampled in this thesis featured consistently throughout the period for their low rates of crime. In Plint's study of crime in England, between 1801 and 1848, Northumberland and Durham, in any one decade sampled, were consistently under the national average for crimes recorded per 100,000 of the population (see table 1); by comparison, on the Northern Circuit, Lancashire was consistently above. Even when accounting for the increasing urban sprawl and demographic growth throughout this period, these counties were still marked by comparatively small population density, most notably in Northumberland. For some this was key to understanding the limited nature of crimes recorded in these regions.

'What chance has the perpetrator of petty larcenies in such counties as Cumberland and Westmoreland, or even Durham, compared -with counties like Lancashire, Yorkshire,

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<sup>131</sup> T. Plint, *Crime in England: Its Relation, Character and Extent, as developed from 1801-1848*. (Charles Gilpin: London, 1851), p.89. Accessed online (21 Nov 2019) <https://play.google.com/books/reader?id=jqoXAAAAYAAJ&>

<sup>132</sup> Plint, *Crime*, p. 103.

Middlesex, and Warwick, with their densely populated capitals and chief towns?... The pickpocket and the thief can find no nestling-place amongst the statesmen of Cumberland and Westmoreland, or the miners of Durham and Cornwall. They fly to Birmingham, London, Manchester, Liverpool, Leeds. They congregate where there is plenty of plunder, and verge enough to hide in.<sup>133</sup>

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<sup>133</sup> Plint, *Crime*, p. 19.

Table 2. Number of Criminals in each 100,00 of the population.

COUNTIES	1801	1820-22	1830-32	1835-37	1840-42
<b>Cumberland</b>	15	36	43	75	74
<b>Durham</b>	16	34	51	60	73
<b>Lancashire</b>	46	169	173	171	239
<b>Northumberland</b>	24	43	40	68	88
<b>Westmoreland</b>	15	31	39	41	63
<b>York</b>	27	68	97	86	133
<b>All England</b>	<b>54</b>	<b>115</b>	<b>146</b>	<b>152</b>	<b>187</b>

Source, Ratio of crime to Population Table I., showing the Number of Criminals in each 100,00 of the population of the several counties of England, and in all England for the undermentioned years.

Thomas Plint, *Crime in England: Its Relation, Character and Extent, as developed from 1801-1848*.

(Charles Gilpin: London, 1851), p.89. Accessed online (21 Nov 2019)

<https://play.google.com/books/reader?id=jqoXAAAAAYAAJ&>

Population density was frequently referred to with regards to low rates of crime in the period, In his national study of the moral statistics of England, Joseph noted 'general *dispersion* of the population' as being an important factor in the marked distinctions between crime rates in the South and South East when compared to the Northern Circuit counties.<sup>134</sup> Other suggestion for the paucity of prosecutions in the mid nineteenth century, invoked the effect of methodism in mining communities.<sup>135</sup> Whilst historians have noted a 'marked disunity' in its effect, more recent studies of the region have acknowledged the growth of evangelical religion as a 'major factor' in creating 'higher standards' in social life in the North East is the nineteenth-century. Amongst other things the influence of the religious revival was cited as a key influence on a substantive drop in drunk and disorderly charges in Newcastle between 1838 and 1852.<sup>136</sup> Their presence was substantial in Newcastle: writing in 1825, McKenzie observed that 'the dissenters of this town are very numerous, and possess several elegant and commodious places of worship.'<sup>137</sup> Another marked

<sup>134</sup> J. Fletcher *Summary of the Moral Statistics of England and Wales*, (n.d.), p.88. Accessed online (21 November 2019) <https://books.google.co.uk/books?id=BxKbpuCztwIC&>

<sup>135</sup> Mood, J. W, "Employment, politics and the working-class women in north east England, c.1790-1914", (PhD diss., University of Durham), p.98.

<sup>136</sup> McCord, *North East England*, p.72.

<sup>137</sup> McKenzie, *An Historical, Topographical, and Descriptive View of the County of Northumberland*, p.448.

finding of crime in the North East was the high proportion of female prosecutions. Morgan and Rushton, noted of the 'regional "metropolis"' Newcastle, that the number of women prosecuted at Quarter Sessions for theft exceeded the number of men. They found that prior to the formal end of the American War of Independence, 1783, women 'constituted a majority of accused thieves in Newcastle.'<sup>138</sup> This finding has seen Newcastle marked out in broader national studies as an exemplar of the 'major impact' women could sometimes have in the prosecution figures of metropolitan areas.<sup>139</sup>

Writing of capital punishment in the eighteenth-century Morgan and Rushton posited that 'severity of sentence mingled with leniency in execution.' By way of evidence they highlighted the numerous reports that carried a 'distinct feeling of relief' when there was a 'maiden' or 'virgin' assize; one in which no sentences of death were passed.<sup>140</sup> This practice continued through the nineteenth century and extended to the Quarter Sessions, where the Recorder often used the occasion to comment more broadly on the state of crime in the county. On receiving the white gloves at the conclusion of the Epiphany Quarter Sessions of Newcastle Upon Tyne, 1870, he pronounced, 'It is a matter of hearty congratulation...that in a town and borough of the great, rising and increasing extent of Newcastle...there should be such a singular absence of crime'<sup>141</sup> Similarly, earlier studies of employment practice in the region, have noted the pride taken in communities, most notably 'outside of the urban centres', with regards to their comparative lack of crime.<sup>142</sup>

This marked pride in the rate of recorded crime, often spilled over into broader discussions surrounding law and order. At a meeting of the Newcastle Town Council in 1836 Mr Doubleday raised the issue of a 'day police' in Newcastle arguing that a 'great majority – of all classes of the inhabitants (of Newcastle) have an insuperable objection' to what he termed a 'lay soldiery.' When counter evidence was put to him of recent reports of their effectiveness in London, Doubleday retorted that,

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<sup>138</sup> Morgan and Rushton, *Rogues*, p.101.

<sup>139</sup> King, *Crime Justice and Discretion*, p.196.

<sup>140</sup> Morgan and Rushton, *Rogues*, p.68.

<sup>141</sup> *Newcastle Journal*, 6<sup>th</sup> January 1870.

<sup>142</sup> Mood, *Employment*, p. 97.

‘he would never submit that the population of Newcastle should be compared with that of the metropolis, or that, because a police was necessary in the one place it was necessary in the other...if, in any one town in the Kingdom, a day police is unnecessary, Newcastle was that town.’<sup>143</sup>

Despite this low incidence of recorded crime, the individual counties were not immune to spikes brought on by political, economic or civil unrest. Further, an absence of recorded crime did not necessarily equate to the perception of an absence of lawlessness in the region as a whole. For example, in the eighteenth-century and early nineteenth century, the ‘dark moor’ of Gateshead Fell, towards the North of County Durham, was marked by its criminal association and until the early enclosure acts of the nineteenth century, renowned as ‘one of the few wild places left in North Durham.’<sup>144</sup> Likewise at the tail end of the period in focus, the *Northern Echo*, writing in 1875 regarding an impending execution at the prison, lamented that the County of Durham had ‘long possessed an evil notoriety in the records of violent crime’, concluding that ‘if matters do not mend the County will become as famous for its murders as it was once for its mustard.’<sup>145</sup> Similarly, although the harshest punishments were comparatively rare, their ability to affect and shame a community was no less keenly felt; indeed, perhaps more so owing to their rarity. In the case of William Jobling, chapter five, his post-mortem punishment of gibbeting, owing to it having largely dropped out of prosecutorial practice, was deemed an *extraordinarily* harsh punishment; no doubt, in part explaining why his body was surreptitiously removed from the gibbet mere weeks after its placement.

## Sources

As with most studies into relatively virgin territory the early steps are treacherous ones, as they are not prefaced on a large existing body of evidence and resources. Unlike the rich source material offered to a student of the Tyburn gallows, a study of execution in the North East must begin on what appears to be relatively fallow ground. The North East had no equivalent of the *Ordinary of Newgate* or the

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<sup>143</sup> *Newcastle Journal*, 7<sup>th</sup> May 1836.

<sup>144</sup> Morgan and Rushton, *Rogues*, p. 93.

<sup>145</sup> *Northern Echo*, July 13<sup>th</sup> 1875.



published *Proceedings of the Old Bailey*. In creating a picture of execution in this period, previous studies have noted the unhelpful reliance on ‘patchy’ and ‘scanty references’.<sup>146</sup> To the untrained eye it is tempting therefore to see in the North East a remarkable absence of execution. To this extent the aphorism “absence of evidence is not evidence of absence” has also to be close at hand. As such a picture must be drawn from a wide variety of sources, amongst them the records of the courts of assize, Home Office, the regional press, execution ephemera, regional histories of the eighteenth and nineteenth century and in certain cases personal diaries detailing attendance at executions and post-mortem punishments.

Whilst it has been established that the intention of this thesis is not to provide a comprehensive quantitative study, the incidences of execution between 1800-1878 have been addressed in both chapters two and three in order to contextualise the chapters’ wider qualitative findings. Figures for execution have been obtained and corroborated using a wide variety of sources. Initially a study of the records of Assizes and, in the case of Durham, the courts of the County Palatine have been undertaken to record the sentences.<sup>147</sup> These have been further contextualised using a variety of contemporaneous secondary sources and previously published scholarly works on punishment in the region.<sup>148</sup> In order to set these in their wider

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<sup>146</sup> Bentley, *Capital Punishment* p. 5; Morgan and Rushton, *Rogues, Thieves*, p. 139.

<sup>147</sup> Figures and details of criminal trials and judgments for Newcastle and Northumberland pre 1876 are drawn from the Records of Assize at The National Archives (hereafter TNA), namely ASSI 41 Northern and North-Eastern Circuits: Crown and Civil Minute Books, ASSI 42: Northern Circuit: Gaol Books, ASSI 43: Northern Circuit: Miscellaneous Books I, ASSI 44 Northern and North-Eastern Circuits: Indictment Files, ASSI 45 Northern and North-Eastern Circuits: Criminal Depositions and Case Papers, ASSI 46 Northern and North-Eastern Circuits: Estreats. For judgements post 1876 the records in ASSI 51 Assizes: Northern Circuit: Indictment Files have been referenced. For Durham the records of County Palatine Courts have been assessed namely DURH 15: Palatinate of Durham: Clerk of the Crown: Minute Books, DURH 16: Palatinate of Durham: Clerk of the Crown: Gaol Books, DURH 17: Palatinate of Durham: Clerk of the Crown: Indictments Files, DURH 18: Palatinate of Durham: Clerk of the Crown: Depositions. From 1843 onwards depositions from Durham Assizes are filed separately from Indictments. Home Office files HO 45 (and HO 145 for executions post 1868) , held at TNA, were also cross referenced. These were all further cross referenced against the broader national databases available at [www.capitalpunishmentuk.org](http://www.capitalpunishmentuk.org).

<sup>148</sup> Several eighteenth and nineteenth century histories of the North East detailed executions and, where possible, provided the name of the criminal, the sentence and the location and date of the execution. Most notable amongst these are E. Mackenzie, *Historical Account of Newcastle-Upon-Tyne Including the Borough of Gateshead*. (Newcastle-upon-Tyne: Mackenzie and Dent, 1827). British History Online, accessed April 9<sup>th</sup>, 2019 <http://www.british-history.ac.uk/no-series/newcastle-historical-account>; E. MacKenzie & M. Ross, *An Historical, Topographical, and Descriptive View of the County Palatine of Durham & c. Volume 2*. (Pilgrim Street: Mackenzie & Dent, 1834); M. A. Richardson, *The Local Historian’s Table Book of Remarkable Occurrences, Historical Facts, Traditions, Legendary and Descriptive Ballads [&c.] Connected with the Counties of Newcastle-upon-*

context, reference has been made to the Northern Circuit as a whole and, where conducive, the national picture of punishment will be provided to contextualise the changes identified in the region. Similarly, thanks to recently published national studies, contextualisation with the wider Northern Circuit and national picture has been provided against this studies quantitative findings regarding the post-mortem punishments of dissection and gibbeting.<sup>149</sup> Where required, population figures have been provided from census records for the nineteenth century and pre census, from recent revised studies of county populations.<sup>150</sup>

In addressing the reception and presentation of the execution the chief source is the regional and, where possible, national press (*The Times* post 1785). The eighteenth century has been labelled 'the most dramatic in the history of the English press', largely based on the rapid growth in press production that far outstripped the equally rapid expansion in population. Indeed, in the 90 years between 1690 and 1780 while the population of England and Wales nearly doubled, the figures for newspapers printed annually grew from 'less than a million to fourteen million.'<sup>151</sup> A heady mix of increasing literacy rates, lowering costs of print production and a rapidly expanding audience for print in all its forms paved the way for a vast expansion of the printed word both nationally and in the provinces.<sup>152</sup> The expansion in the early years of the eighteenth-century was focused largely in Southern regions, but by the middle of the century 'most towns in northern England...enjoyed at least one newspaper.'<sup>153</sup> Of these regional printing centres Newcastle was a particularly renowned one, Helen

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*Tyne, Northumberland and Durham. Historical Division, 1843* (London & Newcastle: J. R. Smith & M. A. Richardson, MDCCCXLIV).

<sup>149</sup> For the comparative figures on dissection and gibbeting this study has used S. Tarlow, *The Golden and Ghoulish Age of the Gibbet in Britain*, (Basingstoke: Palgrave MacMillan, 2017) and E.T. Hurren, *Dissecting the Criminal Corpse: Staging Post-Execution Punishment in Early Modern England*, (Basingstoke: Palgrave Macmillan, 2016).

<sup>150</sup> Wrigley, *English County Populations*, p.33.

<sup>151</sup> J. Black, 'Newspapers and Politics in the 18th Century', *History Today*, 36 (10 October 1986). Accessed 21 Jan, 2018 <https://www.historytoday.com/jeremy-black/newspapers-and-politics-18th-century>; For a detailed assessment of the eighteenth-century press and political landscape see J. Black, *The English Press in the Eighteenth Century* (Routledge, 2010).

<sup>152</sup> A. Walker, 'The Development of the Provincial Press in England c. 1780–1914: An Overview,' *Journalism Studies* 7, (3) (June 2006): pp. 373–86

<sup>153</sup> J. A. Sharpe, 'Reporting Crime in the North of England Eighteenth-Century Newspaper : A Preliminary Investigation,' *Crime, History & Societies* 16 (1) (May 1, 2012), p. 26.

Berry stating the 'little acknowledged fact' that by 1800 Newcastle was 'the most important printing centre in England outside of London and the university towns.'<sup>154</sup>

With this knowledge in mind, it is all the more astonishing that the provincial press has been so little studied, particularly by historians of crime. The early work in this field has tended to focus on moral panics and the extent to which the newspapers could create the perception of a crime wave, irrespective of the figures.<sup>155</sup> It was not until a 2007 edition of *Continuity and Change* that a serious scholarly attempt was made to plug the gap in our collective historical and criminological understanding of the reporting of crime, specifically in the provincial press. In acknowledgement of the dearth of study, in her introduction to the issue, Elizabeth Foyster stated that, 'it is not until now that historians of crime have analysed in any detail what the content of these newspapers can reveal about contemporary attitudes towards crime and justice.'<sup>156</sup> The role of newspapers in the history of crime had, until that point, been largely as a corroborative, factual source.<sup>157</sup>

It is a remarkable gap in our historical understanding, given what a substantial influence the newspapers had on public discourse and opinion. Snell goes so far as to state that in the eighteenth century they were 'the most important vehicle' for the dissemination of information about crime.<sup>158</sup> Similarly Ward, in his work on contemporary responses to crime reportage states that, 'contemporaries based their perceptions more often upon the 'factual' genres such as newspapers and the

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<sup>154</sup> H. Berry, 'Promoting Taste in the Provincial Press: National and Local Culture in Eighteenth-Century Newcastle upon Tyne,' *Journal for Eighteenth-Century Studies* 25 (1) (2002), p. 1.

<sup>155</sup> For the role of the press in encouraging these perceived crime waves see C. A. Casey, 'Common Misperceptions: The Press and Victorian Views of Crime,' *Journal of Interdisciplinary History* 41, (3) (2011), pp. 367–91; P. King, 'Newspaper reporting, prosecution practice and perceptions of urban crime: the Colchester crime wave of 1765' *Continuity and Change* 2 (3) (December, 1987), pp. 423–454; N. Rogers, 'Confronting the Crime Wave: The Debate over Social Reform and Regulation, 1749–1753' in T. Hitchcock & R. T. Shoemaker (eds.), *Stilling the Grumbling Hive; The Response to Social and Economic Problems in England 1689–1750* (New York: St Martin's Press, 1992) pp. 77–98; R. Ward, *Print Culture, Crime and Justice in 18th-Century London* (Bloomsbury Publishing, 2014).

<sup>156</sup> E. Foyster, 'Introduction: Newspaper Reporting of Crime and Justice,' *Continuity and Change* 22 (1) (May, 2007), p. 10.

<sup>157</sup> Notable exceptions in the North East include the work of Morgan and Rushton in reporting both the progress of reprieves and dates of transportation shipments in the eighteenth century. G. Morgan and P. Rushton, *Rogues, Thieves*, pp. 153–70.

<sup>158</sup> E. Snell, 'Discourses of Criminality in the Eighteenth-Century Press: The Presentation of Crime in *The Kentish Post*, 1717–1768,' *Continuity and Change* 22 (1) (May 2007), p. 36.

Proceedings.<sup>159</sup> There are several practical reasons for the lack of study into the newspapers. Until recently, truly detailed research of single titles was difficult enough, given issues of availability and access and the time-consuming nature of study, let alone detailed comparative analysis of multiple titles. However, with the increasing digitization of regional newspapers and the expansion of OCR'd text, the task has been made markedly more manageable. Collections such as the *British Newspaper Archive* and the *Burney Collections* have helped open the way for detailed qualitative and quantitative studies of multiple publications.

The gap in our understanding of press reporting and crime is nowhere more apparent than in coverage of the execution itself. Until relatively recently, remarkably little study has been undertaken into the reporting of executions in the newspapers. It is perhaps historians' tendency to veer towards the more salacious reports of summary justice, that has seen most serious research focus on ephemeral execution literature, as characterized by broadsides and the last dying speeches of the time.<sup>160</sup> As Peter King rightly asserts, the dearth of study into newspapers' coverage of crime and the resultant reception to it is all the more remarkable given that most of the more substantial arguments made by historians of crime have been predicated on the importance of the 'ideological functions of the law and particularly the role of ritual.' Surely to corroborate this argument one must seek complicity in the newspapers with the intended message, given their prevalence as the 'most widely read source of printed information about crime and justice.'<sup>161</sup> Although often very

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<sup>159</sup> R. Ward, 'Print Culture and Responses to Crime in Mid-Eighteenth-Century London' (PhD diss., University of Sheffield, 2010), p. 38. Accessed 17<sup>th</sup> March 2018. <http://etheses.whiterose.ac.uk/1257/>,

<sup>160</sup> For a detailed overview of the form, structure and reception of the broadside in the eighteenth and nineteenth centuries see K. Bates, 'Empathy or Entertainment? The Form and Function of Violent Crime Narratives in Early-Nineteenth Century Broadside' *Law, Crime & History*, 4 (2) (2014), pp. 1-27. Accessed September 17<sup>th</sup>, 2018. <http://www.lawcrimehistory.org/hjournal2014Vo4p2.html>; P. Chassaing, 'Popular Representations of Crime: A Subculture of Violence in Victorian Britain' *Crime, History & Society*, 3 (2) (1999), pp. 23-55; L. B. Faller, *Turned to Account: The Forms and Functions of Criminal Biography in Late Seventeenth- and Early Eighteenth-Century England* (Cambridge: Cambridge University Press, 1987); Gatrell, *Hanging Tree*, pp.156-196; R. McGowen, "'He Beareth Not the Sword in Vain': Religion and the Criminal Law in Eighteenth-Century England,' *Eighteenth-Century Studies*, 21 (2) (1987), p. 192; A. McKenzie, 'Martyrs in Low Life? Dying 'Game' in Augustan England,' *The Journal of British Studies*, 42, (2) (April 2003), pp. 167-205; J. A Sharpe, "'Last Dying Speeches': Religion, Ideology and Public Execution in Seventeenth-Century England,' *Past and Present*, 107 (1985), pp. 144-67.

<sup>161</sup> P. King, 'Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth-and Early-Nineteenth-Century London,' *Continuity and Change* 22 (1) (May 2007), p. 76.

large, the attendant execution crowd would in most instances have been dwarfed by the wider readership of the execution itself in the provincial papers.

More recently, there have been several works of note seeking to address this gap and, perhaps more importantly, they have had the provinces as their focus.<sup>162</sup> Given the relative paucity of study into execution reports in the press, it is worthy of note how much concurrence there is in the initial work undertaken. The execution reports themselves have been found to have a broadly formulaic structure, that 'gave messages about the reformatory nature and efficacy of the execution process, and created an acceptable image of justice.'<sup>163</sup> Certainly previous earlier studies into the Northern Circuit have concurred with this finding, noting the largely 'patchy and formulaic' character of the hanging reports available.<sup>164</sup> More recent works have found a divergence in the reporting styles of politically conservative and more liberal publications, both in Lincoln and Norfolk, with the former tending to write more expansively and place a heavier focus on both the justification of the sentence and the ministrations of the chaplains attendant in attempting to 'save the soul of the obdurate culprit.'<sup>165</sup> This thesis will seek to build on this exciting new field of investigation with a specific focus on the North East newspapers. Through a combination of the resources of *The British Newspaper Archive*, *The Burney Collection*, *Newcastle Central Library* and *Tyne and Wear Archives Museum* I have had access to numerous regional titles spanning the period in question.<sup>166</sup>

This study has also made use of surviving broadsides and execution ephemera, where available, sources recognised as 'the most common piece of execution literature by far' in earlier studies of regional execution culture.<sup>167</sup> These have been

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<sup>162</sup> Most notable amongst these have been works analysing the press in Lincoln, Norfolk, Northampton. Tulloch, 'The Privatising of Pain,' pp. 437-51; Walliss, 'Representations of Justice,' pp. 30-51; 'The Great Portion of the Scum of Society,' pp. 71-90; Dyndor, 'Death Recorded', pp. 179-95.

<sup>163</sup> Dyndor, 'Death Recorded,' p. 179.

<sup>164</sup> Bentley, *Capital Punishment* p. 3. Similarly, Morgan and Rushton noted numerous examples of reports that were later changed suggesting that reports had used 'stock phrases in anticipation of the condemned doing the proper thing.' Morgan and Rushton, *Rogues, Thieves*, p. 148. Other studies have noted the use of 'stock images' in broadsides K. D. Murphy & S. O'Driscoll, *Studies in Ephemera: Text and Image in Eighteenth-Century Print* (Lewisburg: Bucknell University Press, 2013). p. 20.

<sup>165</sup> Tulloch, 'The Privatising of Pain'; Walliss, 'Representations of Justice' p. 447.

<sup>166</sup> British Newspaper Archive ([www.britishnewspaperarchive.co.uk](http://www.britishnewspaperarchive.co.uk)); 17th-18th Century Burney Collection Newspapers, Gale Group; Newcastle Central Library (NCL).

<sup>167</sup> Dyndor, 'Death Recorded', p. 181.

drawn from a mixture of local and national collections most notably the Bodleian Library's *John Johnson Collection* (JJC), Harvard Library's *English Crimes and Execution Broadside* Collection, Newcastle Central Libraries' (NCL) *Local Broadside Files* and the Tyne and Wear Archives Museum's (TWAM) *Local Ephemera* and *Rogues* file.<sup>168</sup> The newspapers and the more ephemeral literature of execution are not without their pitfalls as sources of historical record. In the case of the former there is a distinct lack of detailed reporting of execution in the eighteenth century despite a thriving newspaper trade the traditional reports offering little more than a summation of the time and location of death with cursory remarks on both the condemned's final words and behaviour and occasionally the size and behaviour of the crowd. However, by the nineteenth century the size of reports on both the criminal trial and execution grew dramatically. Indeed, by the mid nineteenth century, reports of executions in the North East could often run to whole pages, with detailed assessments of the trial, last days of the condemned and the hanging itself. A further caution when using the newspaper as a source, has been highlighted in ground-breaking work on the execution crowd in London, namely the 'negativity embedded in the historical record.'<sup>169</sup> In a similar vein, broadside ballads and execution ephemera must be read with a recognition of their nature as a saleable document intended to reach as wide an audience as possible. In as much they are often prone to extremes of conformity with the intended authorities' message or salaciousness to entice a sale. Indeed, at the 1752 execution of Ewen MacDonald on Newcastle's Town Moor his reported 'Last Dying Words' carried the following footnote, 'this most fortunate youth died in a very penitent manner and behaved with Decency and Resignation.'<sup>170</sup> This was in stark contrast to competing reports that

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<sup>168</sup> Bodleian Library, University of Oxford: John Johnson Collection (JJC) (<https://www.bodleian.ox.ac.uk/johnson>); *English Crime and Execution Broadside*s, Harvard Law School Library, Harvard University (<https://curiosity.lib.harvard.edu/crime-broadside>); *Local Broadside*s Newcastle Central Library (L.029); *Local Broadside*s 1813-1834 Newcastle Central Library (L.029.3); J. Bell, *Collections Relative to the River Tyne its Trade and the Conservancy Thereof. Vol III River Tyne Collection III 1824-1839*, NCL (L942.8); *Local Ephemera* 1791 – 1836, Tyne and Wear Archives Museum (TWAM) DX17; *Rogues File*, (TWAM) 616/1.

<sup>169</sup> In his excellent work in attempting to identify the make-up of the London execution crowd White noted the propensity of newspapers to provide a 'two dimensional...glut of critical commentaries' in respect of the execution crowd and largely failing to ever attempt a detailed and nuanced assessment of those in attendance and their reasoning for it. M. White, 'Ordering the Mob: London's Public Punishments, c. 1783-1868,' (PhD Diss., University of Hertfordshire, 2009) p. 359. <http://uhra.herts.ac.uk/handle/2299/4253>.

<sup>170</sup> 'The Dying Words and Confession of Owen MacDonald,' (n.d), *Local Broadside*s, NCL (L029.3) MacDonald is recorded as both Owen and Ewen in surviving literature but the predominant recording of Ewen is used for the purposes of this thesis.

recorded MacDonald as kicking the executioner off the ladder.<sup>171</sup> In spite of their complications as sources, the newspapers and execution ephemera are arguably our strongest historical indicator of how contemporaries understood and engaged with the criminal law and execution. As such they are a vital resource in any study of how execution was presented and received. Furthermore, despite the relatively sporadic and unpredictable nature of their survival it is clear that they were a relative constant at executions throughout the period studied, particularly prior to 1868, examples surviving late into the nineteenth century as at the execution of Matthew Atkinson, the final public hanging in Durham, where a broadside detailing the crime and execution survives with woodcut of the hanging.<sup>172</sup> Likewise at the 1846 execution of George Matthews and Welch at Morpeth, one paper noted that after they were hung 'the last dying speech and confession of Matthews and Welch' were hawked among the stragglers who were still present.<sup>173</sup>

One further source that has been utilised in assessing the reception and presentation of public execution between 1800-1868 is the private diaries of Richard Lowry, a resident of Newcastle.<sup>174</sup> Lowry detailed his daily life in the region between 1834 and 1899 and two of his entries record his attendance as spectator at executions in Newcastle Upon Tyne.<sup>175</sup> First-hand accounts of executions are particularly rare and even rarer still in the provinces. Of the surviving accounts they are mainly by elite commentators of the period and regarding executions undertaken in London; the most notable examples include Dickens and Thackeray who both

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<sup>171</sup> *Newcastle Courant*, September 30<sup>th</sup> 1752.

<sup>172</sup> 'Execution of M. Atkinson at Durham: with the horrible scene that took place through the breaking of the rope, and thus causing the prisoner to be hung a second time' (London: Henry Disley) Harvard Law School Library, Harvard University, Record ID: 990021962840203941. Accessed 17<sup>th</sup> December, 2018. <https://id.lib.harvard.edu/curiosity/crime-broadsides/46-990021962840203941>. Another broadside for the execution of Atkinson can be found in Newcastle Central Library, but significant damage has removed the title (Walker, n.d), *Local Broadsides*, NCL (L.029.3). Recent studies of execution ephemera and popular crime literature have noted the 'collapse' of the broadside market post 1868. R. Crone, *Violent Victorians: Popular entertainment in nineteenth-century London* (Manchester, New York: Manchester University Press, 2012), p. 115. Although later examples of the form exist it is widely acknowledged that the 'genre reached its apogee during the first half of the nineteenth century' P. Chassaigne, 'Popular Representations of Crime: A Subculture of Violence in Victorian Britain' *Crime, History & Society* 3 (2) (1999), p. 23.

<sup>173</sup> *Newcastle Courant*, March 19<sup>th</sup> 1847.

<sup>174</sup> *Diaries of Richard Lowry 1834-1899*, TWAM (DF.LOW/1)

<sup>175</sup> Lowry attended the executions of Mark Sherwood, 1844, on Newcastle's Town Moor and Patrick Forbes, 1850, on the walls of Newcastle's Carlisle Square Gaol. He was due to attend what turned out to be the final public execution in 1863, George Vass, and does carry a later report of it although it would appear that he missed it owing to a cold and has relied on a friend and newspapers for the detail.

reported on their experience of seeing François Benjamin Courvoisier executed at Newgate Prison on the 6<sup>th</sup> July 1840.<sup>176</sup> Lowry's assessments of the two spectacles are detailed and profound and give a much needed insight into the complicated nature of the execution crowd.

For execution in the decade immediately following the 1868 Capital Punishment Amendment Act, where hangings removed to behind the prison walls, particular use has been made of Home Office files. Most notable amongst these are the individual criminal case files of HO 45 and HO 144.<sup>177</sup> Supplemented by the newspaper reports these files give insight into the carrying out of the sentence, including the official post execution reports, any post-trial efforts at commutation and the sitting Judge's reports on his decision in court and later reiterations of the same. They also give valuable insight into the work of both the presiding Sheriff and Visiting Justices whose task was the administration of prison execution.

In the second half of the thesis, in addressing post-mortem punishment additional resources have come into play. One of the ironies of such an expressly public period of punishment is how hidden its history has become. Gibbets by their very nature were deliberately unavoidable and as such are recorded in works of popular fiction and official records, however dissections are a far trickier beast. Owing to the necessarily clandestine nature of anatomists' work, a by-product of popular opprobrium,<sup>178</sup> much was done to destroy most of the 'straightforward evidence', leaving very little official trace of dissection.<sup>179</sup> What remains for the historian of the North East is a rather sporadic collection of popular myths, brief newspaper entries, the limited official records of the Barber Surgeons of Newcastle and Barber ropers of Durham and fortuitously, the personal diary of an apprentice surgeon practising in Newcastle in the decade prior to the introduction of the 1832 Anatomy Act.<sup>180</sup> In the

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<sup>176</sup> A. I. Borowitz, 'Under Sentence of Death', *American Bar Association Journal*, 64 (August, 1978), pp. 1259-1265. The marked difference in the reactions of both is testament in and of itself to the diversity of emotions experienced at the gallows, so little acknowledged in previous studies.

<sup>177</sup> TNA.

<sup>178</sup> P. Linebaugh, 'The Tyburn Riot', pp. 65-118; K. Cregan, 'Edward Ravenscroft's The Anatomist and the 'Tyburn Riots Against the Surgeons'', *Restoration: Studies in English Literary Culture*, 1660-1700 32 (1) (2008), pp. 19-35.

<sup>179</sup> E. T. Hurren, *Dying for Victorian Medicine* (Basingstoke: Palgrave Macmillan, 2011), p. xvii,

<sup>180</sup> T. G. Wright & A. Johnson, *The Diary of Thomas Giordani Wright, Newcastle Doctor, 1826-1829* (Boydell Press, 2001).



case of the North East of England, the records of the Barber Surgeons of Newcastle are a particularly full and valuable source, but as will be shown the absence of dissections from the official record is particularly marked.<sup>181</sup> Perhaps owing largely to the fullness of the records of the Newcastle Surgeons and its importance as a centre for surgical enquiry there is a far heavier weight placed on the experience of Newcastle in this chapter. Testament to its prominence in the region and wider import can be seen in several areas. Firstly, amongst its leading eighteenth Surgeons was one Richard Lambert recognised as the ‘first pioneer of restorative arterial surgery.’<sup>182</sup> Further testament to this is the ‘not generally realised’ fact that Newcastle is the only university town in England where its university teaching commenced in the faculty of medicine, established by one-time members of the Barber Surgeons.<sup>183</sup> In addressing prison burial special use has been made of Home Office and Prison Commission files surrounding the procedures for prison burial.<sup>184</sup> In the move to decommission and sell Newcastle’s Carlol Square Prison in the 1920s numerous records, including the site of burial locations and medical reports on the burial procedures was requested by the Home Office and gives a unique insight into the provisions made.

One further source worthy of note, if only to disabuse them of their moral rectitude, are the official ‘medical histories’ of the region. Much has been done in recent years to correct and challenge the record of medical histories, with the emphasis placed on relocating the human story behind dissection. A standout in this field is Elizabeth Hurren whose work continues a lesser trodden path, arguably started by Richardson who noted the dearth of ‘published work on the history of attitudes of death’ which forced her to perform the painstaking task of procuring the untold story that the ‘hero worship most medical history represents’ conveniently ignored.<sup>185</sup> Richardson’s

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<sup>181</sup> This problem of sources is far less pressing in the wake of the Anatomy Act. As Elizabeth Hurren’s recent pathbreaking work on the Anatomy trade has successfully argued the 1832 Anatomy Act, which decreed that subjects of dissection must receive a Christian burial, has meant that ‘In Britain bureaucracy has been betraying its secret medical history since the Anatomy Act’, Hurren, *Dying*, p. xvii.

<sup>182</sup> D. Gardner-Medwin, ‘Down the Long Series of Eventful Time,’ in *Medicine in Northumbria: Essays on the History of Medicine in the North East of England* D. Gardner-Medwin et al. (eds.) (Newcastle-upon-Tyne: Pybus Society, 1993), p. 11.

<sup>183</sup> G. Dale, ‘Newcastle’s Medical Schools,’ in *Medicine in Northumbria* p.211.

<sup>184</sup> These National Archive files include H0 324/1 HO 324/2, PCOM 8/220, PCOM 8/221 and PCOM/222.

<sup>185</sup> Richardson, *Death, Dissection and the Destitute*, p. xiv.

critique of traditional medical histories and their inability to complicate or question the motives or practices of their forebears is eminently apparent in the early records on Newcastle's burgeoning medical fields. A disregard for the sensitivities and emotions that surround the bodies of the executed or poor as anything other than a receptacle for learning is frequently apparent. Particularly indicative of this is former Emeritus Professor of surgery at Durham University, Frederick Charles Pybus', work on the early life of the Newcastle medical school in which he states of early body snatching stories and illicit dissections at the school, 'some interesting and amusing events occur in its early history and during resurrectionist times.'<sup>186</sup> It is worthy of note that elements of this medical nonchalance to the human persist to this day, arguing of medical case studies during his tenure as a leading Neurologist in the twentieth century, Oliver Sachs stated,

'they tell us nothing about the individual and *his* history; they convey nothing of the person, and the experience of the person, as he faces, and struggles to survive, his disease...modern case histories allude to the subject in a cursory phrase...which could as well apply to a rat as a human being.'<sup>187</sup>

## Periodisation

Timescales of historical studies have been brought under the microscope in recent years, following the unprecedented open publishing of the incendiary and provocative *History Manifesto*.<sup>188</sup> Its call for a retreat from, what the authors term, a post 1960s short termism in which historians moved towards 'biological timescales' of between 'five and fifty years' for historical studies and consequentially ceased to be a 'future orientated....reformist' profession, has caused a lively debate. Whilst some categorised the arguments made as 'one-eyed' and based on largely 'non-existent' evidence, the call made by the book is nevertheless an intriguing one and,

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<sup>186</sup> Obituary,' *The Lancet*, 305 (7909) (March 29<sup>th</sup>, 1975), p. 757; F. C. Pybus, 'The Company of Barber Surgeons and Tallow Chandlers of Newcastle-on-Tyne,' *Proceedings of the Royal Society of Medicine* 22 (3) (January 1929), p. 291.

<sup>187</sup> O. Sacks, *The Man Who Mistook His Wife for a Hat and Other Clinical Tales* (Simon and Schuster, 1998), p. viii.

<sup>188</sup> J. Guldi and D. Armitage, *The History Manifesto* (Cambridge: Cambridge University Press, 2014), p. 121; 'An Interview with David Armitage and Jo Guldi,' YouTube, 'CUPAmericas' Accessed September 19th, 2016 [https://www.youtube.com/watch?v=Zcw8\\_awZYas](https://www.youtube.com/watch?v=Zcw8_awZYas).

by the authors' own contentions, intended to be 'somewhat provocative'.<sup>189</sup> The debate comes in the midst of a minor resurgence of big histories, perhaps best illustrated by works such as Steven Pinker's *The Better Angels of our Nature* in which the assertion is made that we are living in the most peaceful age in human history, a position the author concedes that would not be believed by the majority.<sup>190</sup> Similarly, in the study of criminal history, a plethora of big data projects are increasingly allowing historians to look over larger and broader timescales in a forensic detail that would have been hitherto impossible.<sup>191</sup> This resurgence is particularly hard to ignore in the context of this thesis. Both of the central theoretical constructs addressed, that of Foucault's narrative of control and Elias' latterly adopted notion of increasing 'civilisation', take as their focus a span of centuries.

In a similar vein to these larger historical studies, this thesis seeks to address a longer period than has been sometimes covered by studies of execution. The start and endpoints for executions are 1800-1878 and, for post-mortem punishment, the 1752 Murder Act and the 1877 Prisons Act, which saw the effective Nationalisations of prisons by 1878.<sup>192</sup> It is essential to acknowledge that all beginnings and endings are artificially constructed by the author and as such are not indicative of any 'new' period. However, the parameters chosen mark a period in which the execution spectacle underwent a widely acknowledged fundamental transfer in presentation. More importantly it marks the last true period in which there was a regional autonomy over both the application and presentation of the punishment of execution. The 1877 Prisons Act ushering in a new era of centralised control over the spectacle that was hitherto unprecedented. As such this period offers a rich insight into the workings of justice in a hitherto largely unexplored region of England at a time of truly localised control.

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<sup>189</sup> Guldi and Armitage, *Manifesto*, p. 7.; D. Cohen & P. Mandler, 'The History Manifesto: A Critique', *The American Historical Review*, 120 (2) (April, 2015), pp. 530–542.

<sup>190</sup> S. Pinker, *The Better Angels of Our Nature: A History of Violence and Humanity* (London: Penguin, 2012).

<sup>191</sup> D. Reynolds, 'The Return of Big History: The Long Past Is the Antidote to Short-Termism,' *New Statesman*, 29<sup>th</sup> January, 2015. Accessed 17<sup>th</sup> December 2017

<http://www.newstatesman.com/politics/2015/01/return-big-history-long-past-antidote-short-termism>

<sup>192</sup> The Act transferred all local prisons to central government control effective from 1st April 1878. For a detailed summary of its immediate scope and effects see S. McConville, *English Local Prisons, 1860-1900: Next Only to Death* (Psychology Press, 1995), pp. 392-431. J. F. Harrison, 'The Justices and the Prison Act, 1877: The Example of Wakefield' *Northern History*, 39 (2) (September, 2002), pp. 245-263.

In any choice of periods one must acknowledge their limitations. Indeed, it has been forcefully asserted that a burgeoning focus on the primacy of the 1752 Murder Act has led to the widely held misapprehension that post-1752 was a Golden Age of execution and public punishment more widely. This is in spite of historians like J. A. Sharpe pointing out that levels of execution were 'far lower' in the eighteenth century than in the 'later Tudor and early Stuart periods'.<sup>193</sup> In Newcastle alone during the witch trials of 1649 at one single execution fourteen 'reputed witches belonging to Newcastle' and one wizard 'in company with nine thieves and a witch of the county of Northumberland' were executed on Newcastle's Town Moor.<sup>194</sup> A total of 29 people executed in one day, accounting for more executions in Newcastle than in the entire 126-year period of this study. This should not negate its validity as a starting point for historical investigation though. If the practical reality of the Act itself was not as bloody as previously thought, the intention remains unchanged, marking as it did a renewed ardour in the publicity of punishment.

Finally, in respect of post-mortem punishment the second half of the thesis will track a similarly extended timeline between 1752-1878. It will be shown that the selective periodisation in most post-mortem punishment studies should also be called into question. All too often the end point of these studies is the legislative acts of 1832 and 1834, acts that simultaneously ended the punishments of dissection and gibbeting.<sup>195</sup> However, this endpoint ignores the continuation of another punishment namely the refusal of the return of the criminal body and Christian burial. Seen through this longer timescale, far from a slow decline on the punishment of the body of the condemned, we can see a steady transfer in which the criminal corpse became the property of the state in both life and death.

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<sup>193</sup> J. A. Sharpe, 'Civility, Civilizing Processes, and the End of Public Punishment in England', in P. Burke & B. Harrison (eds.) *Civil Histories: Essays Presented to Sir Keith Thomas* (OUP: Oxford, 2000), p. 217.

<sup>194</sup> J. Brand, *The History and Antiquities of the Town and Country of the Town of Newcastle Upon Tyne, Including an Account of the Coal-Trade of That Place and Embellished with Engraved Views.* - London, B. White 1789 (B. White, 1789), p. 478.

<sup>195</sup> The Anatomy Act 1832 (2 & 3 Will. IV c.75) & Hanging in Chains Act 1834 (4 & 5 Will. IV c.26)

## Chapter Breakdown

This thesis is written in two distinct parts. The first, over two chapters, addresses the experience, presentation and reception of capital punishment in the North East of England between 1800-1878, broken down into two distinct periods 1800-1868 and 1868-78. The second half examines the post-mortem punishment of the bodies of the condemned between 1752-1878.

Chapter two looks at executions between 1800 and 1868, arguing that these executions were markedly different spectacles from their fully public predecessors and were subject to change at different times and for different reasons across the regions sampled. The chapter also highlights how the North East, in particular Newcastle, was particularly late in adopting the move towards a prison-based execution. Executions in London moved from Tyburn to outside the walls of Newgate Prison in 1783, yet in Newcastle Mark Sherwood was being hanged in the middle of the Town Moor Race-Course as late as 1844. Indeed, it wasn't until 1850, just shy of seven decades after London's transfer, that an execution took place at the town's prison. The chapter seeks to show that in part the low incidence of execution meant that no specific provision was made for execution at Newcastle's Carlisle Square gaol, built in the 1820ss. Indeed, the first execution to take place there required masons to remove bricks from the exterior wall to allow the prisoner access to the outside. Similarly, an increasing fear of the behaviour of the execution crowd, further exacerbated by a catastrophic crowd crush in Nottingham in 1844, was key in delaying any transition of punishment. Furthermore, in studying Northumberland's execution experience, it will be shown that, far from a region late to change, Northumberland's execution location and presentation changed numerous times across the nineteenth century and before Durham and Newcastle.

Chapter three assesses the decade after 1868 when execution moved behind the prison walls. Following the Capital Punishment Amendment Act of 1868, hangings henceforth took place out of public sight and administered within the prison in which the condemned was incarcerated. It takes as its endpoint the 1878 Nationalisation of Prisons, arguing that the decade prior to it showed key regional anomalies in the

practice and adoption of capital punishment in private. As previously noted, recent scholarly work has begun to question the prevailing narrative that the 1868 Act was a moment of 'civilisation'. McGowen, in particular, arguing that 'the belief in the moral superiority of private penalties passes as one of the unquestioned assumptions governing our contemporary relationship to punishment.'<sup>196</sup> It will be argued that this is as much owing to the limited scholarship on execution in the immediate aftermath of the 1868 Act as to anything else.<sup>197</sup> In an attempt to address this gap, the chapter can make no clear claims to a national picture of execution, but seeks to show in the North East, particularly Durham, there was a dramatic increase in its incidence and in some instances a return to double and triple hangings unseen for many decades previous. Furthermore, it will argue that administrative confusion, even in the House of Commons, over whom the ultimate responsibility for the execution lay with, led to curious anomalies in regional practice. In the North East, Durham in particular, the press (widely understood as the surrogate for the public) were routinely excluded. The authorities became disenchanted with the representatives of the press for reporting on what they deemed sensationalist aspects of each execution, more often than not these were instances of botched practice by the hangman and attendant officials. This removal of the execution from public view to a 'mediated publicness' in which the press became representatives of the public simultaneously removed a layer of agency from the condemned, namely their last dying words.<sup>198</sup> Authorities in the North East increasingly moving to have these removed from any record or report deeming them irrelevant. With this evidence in mind, the 1868 Act can arguably be seen as the by-product of a new level of control over a once chaotic spectacle as much as any praiseworthy 'civilised' moment.

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<sup>196</sup> R. McGowen, 'Civilizing Punishment: The End of the Public Execution in England', *Journal of British Studies* 33 (3) (1994), p. 257.

<sup>197</sup> Much needed work has been done recently on execution post 1868 although the focus itself of these works has tended to be as part of broader cultural history that takes in c20th execution. As such the detailed focus on the immediate aftermath of the 1868 Act is still very much needed. Chief amongst these noted works are L. Seal, *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory* (Routledge, 2014); J. Rowbotham, 'Execution as Punishment in England: 1750-2000', in Anne-Marie Kilday & D. Nash (eds.) *Histories of Crime: Britain 1600-2000* (Basingstoke: Palgrave MacMillan, 2010), pp. 180-202; S. McConville, *English Local Prisons*, p. 392-432

<sup>198</sup> Tulloch first used the term 'mediated publicness' in studies of executions to apply to the role that the press played as execution reporters following the removal of the crowd. The reference was drawn from the work of J. B. Thompson. Tulloch, 'The Privatising of Pain', p. 440; J. B. Thompson, *The Media and Modernity: A Social Theory of the Media* (Stanford University Press, 1995), pp. 135-37.

Chapter four assesses the post-mortem punishment of dissection, as dictated by the 1752 Murder Act. It argues that the punishment was used far more widely than its counterpart of gibbeting, accounting for almost 90% of post-mortem punishments for murder. It was also used exclusively for the punishment of murder and was suffered by both men and women, unlike gibbeting. In this sense, its use in the North East sits broadly in line with national trends observed in recent years.<sup>199</sup> It will show that the punishment could attract large audiences, dependant on the prevalence of the case of standing of the condemned. However, it will be shown that unlike its legislative counterpart of gibbeting, it was an avoidable punishment for the public and as such should not be understood as being as expressly public as the gibbet. Furthermore, it will illustrate that dissection was undertaken differently from region to region and in some cases may never have been witnessed by the local community (Northumberland's prisoners were all sent to the Newcastle Barber Surgeons). Similarly, dissections undertaken at Durham were far shorter in length and more tokenistic than their counterparts in Newcastle and often allowed, for post-mortem burial.

Chapter five evaluates the prevalence and practice of gibbeting in the North East between 1752 and its removal by the 1834 Hanging in Chains Act. It will be shown that, despite its limited incidence, far more than the gallows the gibbet was in fact the dominant structure and longest lasting symbol of suffering in the North East landscape. Their relative permanence and geographical location lent them a potency that permeated topographical record and folk memory to a far greater extent than the gallows. Furthermore, it will be argued that its relative permanence also led to its potential to transmute in meaning from a symbol of state retribution to something as diverse as a site of medical healing. Also, it was a punishment never adopted in Newcastle in the period studied, arguably owing to the strong presence of a medical community in the region more eager for dissection subjects than public displays of judicial violence.

The concluding chapter of this thesis addresses the practice of prison burial. The refusal of a proper burial and the return of the body to relatives was a punishment

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<sup>199</sup> Hurren, *Dissecting the Criminal Corpse*; Bennett, *Capital Punishment*.

expressly for the crime of murder, as dictated by the Murder Act. However, in this chapter it will be shown that unlike the concomitant punishments of dissection and gibbeting it continued unabated into the twentieth century and became the standard practice for all executionable crimes. In addition, evidence of the use of lime to destroy the criminal body arguably highlights a continuation of the more baroque cruelties of execution at a period when they are widely acknowledged to have been dying out. As such its continuation necessarily complicates any simple teleology of civilisation and sits more in line with a narrative of creeping control over the criminal corpse in both life and death.

### **Unique contribution**

This chapter has highlighted the place of this study in the wider historiography and as such makes the following claims to its originality. It will aim to provide the first detailed overview of execution in the North East of England between 1800-1878 and post-mortem punishment from 1752-1878. It will offer a unique insight into both the regional presentation and reception of execution in England and the changing punishments on the criminal corpse. Furthermore, it gives the first detailed assessment of capital punishment in the immediate aftermath of the 1868 Capital Punishment Amendment Act and, alongside it, a study of prison burial as a post-mortem punishment. In both its focus and broad timeline, it will seek to question the received narratives in the historiography of capital punishment and offer a much-needed regional perspective on a punishment so central to the English penal system.

### **Conclusion**

No historical study is written in isolation. As such it has not gone unnoticed that during the undertaking of this thesis the 150th anniversary of the abolition of public execution in England passed. It is perhaps worthy then to briefly reflect on the state of Capital Punishment as it is now. In his detailed diary account of the execution of Mark Sherwood on Newcastle's Town Moor in 1844, railwayman Richard Lowry concluded, 'What will future ages say at such barbarous proceedings as this...time



is fast coming when such murder will no longer be perpetrated.'<sup>200</sup> In one sense Lowry's assertions can be seen as very prescient as the spectacle on the Town Moor was to be the last of its kind in the region, but execution in various guises continued largely unabated for another century in England and Wales and its continuation globally to this day may well have shocked him.<sup>201</sup>

In response to Lowry, it is tempting to paint a rosier picture than is justified and one that tallies with his assertions. Seen through a Western European lens the mid to late twentieth century marked a Europe-wide retreat of the spectre of capital punishment. However, the global picture is not so rosy. In 2015, Amnesty International reported that global figures on capital punishment were at their highest level since their records began in 1989.<sup>202</sup> Over 1,634 executions were recorded, a number in itself that doesn't include the many thousands of executions estimated to take place each year in China (a country in which death penalty figures remain state secrets).<sup>203</sup> Amongst the more optimistic appraisals of the figures Amnesty International sought to offer the scant reward that, despite the increase, fewer and fewer countries were undertaking the practice, leading them to assert that 'the world continues its march towards abolition of the death penalty.'<sup>204</sup> Likewise, the presentation of capital punishment varies widely across the world and is subject to rapid change. Whilst Japan is noted for its intense secrecy, Saudi Arabia is still recorded as, in certain cases, placing the 'dead bodies and severed heads' of executed criminals on public display.<sup>205</sup> Indeed in the rise of the Islamic State and

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<sup>200</sup> Lowry stood mere yards from the gallows, a space he strove to get to in order to guarantee a good view of the proceedings. This in spite of his abolitionist leanings. He was as such a rare glimpse into the complexities of the crowd at an execution, so often hidden in the historical record. *Diaries of Richard Lowry*, August 23, 1844. (TWAM) [DF.LOW/1/11](#), p. 301.

<sup>201</sup> As later chapters will show, Sherwood's was to be the last of its kind. Although public executions continued in Newcastle, this was the last one staged on the Town Moor and in the fashion it was. A subject which will be covered in greater detail later in the thesis.

<sup>202</sup> 'Amnesty Highlights 'disturbing Rise' in Global Executions,' *BBC News*, 6<sup>th</sup> April, 2016. Accessed 10<sup>th</sup> April, 2016 <http://www.bbc.co.uk/news/world-35971623>.

<sup>203</sup> 'Robert Lloyd Schellenberg death sentence: China executes foreigners all the time: The case of this Canadian is different' CNN, 16<sup>th</sup> January, 2019. accessed 24<sup>th</sup> January, 2019 <https://edition.cnn.com/2019/01/15/china/china-canada-executions-africa-intl/index.html>

<sup>204</sup> 'Death Penalty 2016', *Amnesty International*, 4<sup>th</sup> June, 2016. Accessed 15 February, 2017, <https://www.amnestyusa.org/press-releases/death-penalty-2016-alarming-surge-in-recorded-executions-sees-highest-toll-in-more-than-25-years/>

<sup>205</sup> D. T. Johnson, 'Where the State Kills in Secret: Capital Punishment in Japan', *Punishment & Society* 8 (3) (July, 2006), pp. 251–85; 'Saudi Arabia' Rampant executions fuelled by justice system 'riddled with holes,' *Amnesty International*, 25<sup>th</sup> August, 2015 Accessed 28 August 2017, <https://www.amnesty.org/en/latest/news/2015/08/saudi-arabia-rampant-executions-fuelled-by-justice-system-riddled-with-holes/>.

their focus on waging war as much on the ground as through the internet and traditional media outlets, the old borders of the prison walls seemingly don't apply as access to brutalising examples of public execution are merely a click away.<sup>206</sup>

Finally, it is worthy of note that seismic shifts in the political landscapes in both Britain and Europe may see the European narrative of 'progress' face its first serious challenge in years. The implications of Brexit and the possible severance from European ties will undoubtedly bring many legislative skeletons to the surface. It is worthy of note then that prominent members of the Conservative Cabinet are on record as backing the ropes return. Indeed, questioned on BBC's flagship political programme, Question Time, Priti Patel stated that she personally, 'supports the reintroduction of capital punishment to serve as a deterrent.'<sup>207</sup> Perhaps just as worthy of note, was the wording of the question. 'Does Capital Punishment have a role in civilised society?' In her representations Patel was not as unrepresentative as people like to assume. In the initial months of my study a YouGov poll noted that a majority of people polled favoured the reintroduction of capital punishment for the crime of murder (although these figures also noted a steady decline).<sup>208</sup> Similarly a recent sample of Leave Voters in the EU referendum placed the 'return of the death penalty' higher than any other option in a list on things that should be brought back in Britain following the vote to leave.<sup>209</sup>

We have then a punishment in a state of flux. It cannot be viewed coldly as a barbaric remnant of a distant past. It is a present concern. One which we ignore at our peril.

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<sup>206</sup> F. Larson 'Why public beheadings get millions of views' TEDGlobal London, June 2015. Accessed 17<sup>th</sup> January, 2019  
[https://www.ted.com/talks/frances\\_larson\\_why\\_public\\_beheadings\\_get\\_millions\\_of\\_views?language=en](https://www.ted.com/talks/frances_larson_why_public_beheadings_get_millions_of_views?language=en)

<sup>207</sup> 'Troy Davis Death Penalty Debate Question Time,' YouTube video, 'Smithsnick', September 25<sup>th</sup>, 2011. Accessed March 23<sup>rd</sup>, 2016 <https://www.youtube.com/watch?v=5aodBfdFTA>. Under intense pressure Patel has since rowed back on her earlier statements on the death penalty, a sign, arguably, of just how polarising the topic still is. D. Singleton, 'Priti Patel finally changes her mind on the death penalty,' *Total Politics*, 14<sup>th</sup> September, 2016. Accessed 23<sup>rd</sup> November, 2017, <https://www.totalpolitics.com/articles/news/priti-patel-finally-changes-her-mind-death-penalty>

<sup>208</sup> W. Dahlgreen, '50 years on, Capital punishment still favoured,' *YouGov* August 13<sup>th</sup>, 2014. Accessed August 19, 2017,

<https://yougov.co.uk/news/2014/08/13/capital-punishment-50-years-favoured/>

<sup>209</sup> C. York, 'Leave Voters want a Brexit Britain with Capital Punishment, School Beatings and Inefficient Lighting' *Huffington Post*, 29<sup>th</sup> March 2017. Accessed September 14, 2017  
[http://www.huffingtonpost.co.uk/entry/leave-voters-brexit-day\\_uk\\_58db873be4b0cb23e65ccbd2](http://www.huffingtonpost.co.uk/entry/leave-voters-brexit-day_uk_58db873be4b0cb23e65ccbd2)

## **Chapter Two:**

### **'I cannot conceive anything more horrible': Execution in the North East of England 1800-1868**

'This morning (probably while this sheet is wet in the hands of the reader) the blood of an unhappy criminal will have been shed, by the hands of the common hangman in one of the public thoroughfares of Newcastle. Happily such a spectacle, never exhibited except in cases of premeditated murder, is exceedingly rare in this town....we hope that Newcastle will be spared again from witnessing Saturnalia of blood, by the law which at present attaches the penalty of death to the most heinous crime against the person known to our laws, being expunged from the statute book.'<sup>210</sup>

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<sup>210</sup> *Newcastle Guardian & Tyne Mercury*, 24th August, 1850.

At the turn of the nineteenth-century a spectator attending a North East execution would have witnessed a spectacle 'largely unchanged in centuries.'<sup>211</sup> The condemned felon(s), led, from the Town or County gaol, through the centre of the town by Halberds and officials of the administrative area to a piece of unremarkable land a few miles North. There the malefactor would be prepared for death by an attendant chaplain and allowed a few last words, often whilst the hangman applied the noose. Having accepted or denied the justice of his sentence and made peace, or not, with God the felon would be drawn off the back of the cart which had conveyed them or thrown off a ladder. In both cases they would have been left to slowly strangle then remained hanging for a customary hour and finally either returned to friends and family for burial or the officials, if subject to further post-mortem punishment. A communal spectacle of justice enacted that had been a constant of English and European society for centuries. Yet in less than a century this ancient spectacle would be changed beyond recognition in the North East and across Europe and America, Evans noting that 'similar changes...happened virtually everywhere in the same epoch.'<sup>212</sup> To Foucault, this transition was nothing less than the redistribution of the 'entire economy of punishment.'<sup>213</sup>

Whilst Evans' assertion is something of a truism, what is remarkable is how little we know of the regional and provincial experience of changes in capital punishment. Traditional chronologies of the changing location of English execution have hinted at a steady linear progression from London outwards. In this narrative the relocation of execution from urban peripheries to central city jails happened relatively rapidly with towns like Chelmsford, Oxford and Liverpool having undergone the change by the end of the 1780s.<sup>214</sup> In this vein late adopters of this central model are often seen as 'laggard participants' in a wider movement of Europe-wide innovation.<sup>215</sup> More recent

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<sup>211</sup> *A True and Particular Account of the Trial and Execution of James O'Neil &c*, (Newcastle: Marshall, 1816). Bodleian Library, University of Oxford: John Johnson Collection (hereafter JJC): Crime 2 (29).

<sup>212</sup> Evans, *Rituals*, p. 894-895.

<sup>213</sup> Foucault, *Discipline and Punish*, p. 7.

<sup>214</sup> In his article on changes to executions in London, Devereaux notes other towns that 'soon followed London's lead', citing changes in Chelmsford (1785), Oxford (1787), Liverpool (1788), York & Aylesbury (1805). Devereaux, 'Recasting the Theatre of Execution', p. 140.

<sup>215</sup> Garland notes of France's particularly late removal of the guillotine from public view, that it was a 'laggard participant' of a wider European change as opposed to an 'exception to it.' D. Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Cambridge, Massachusetts: Harvard University Press, 2010), p. 107.

scholarship of crime scene executions has begun to question this, noting the 'uneven' nature of change in the provinces across the period.<sup>216</sup> Similarly, advances in the study of gibbets have begun to give much needed insight into the differing nature of the post-punishments' application in the provinces.<sup>217</sup> However, precious little work has been done in the regions and provinces regarding the reasons and timelines behind the changing presentation and location of execution.<sup>218</sup> This is particularly true of the North East which is rarely, if ever, mentioned in these reviews of change and then only to demarcate it as a place notably late to it.<sup>219</sup> It is into this gap that this chapter takes its first tentative steps.

Through a detailed study of the timelines and reasons for the changes in each of the regions sampled, this chapter will show that this picture is far too simplistic. Each region changed along different timelines and for differing reasons and furthermore, subtle changes in the execution spectacle, most notably in Northumberland, have often been missed in previous scholarship. Therefore, the region offers a unique insight into the changing nature of execution and the motivations and relative success or failures behind the adaptations made and seeks to fill a much-needed gap in the historiography. Acknowledging these nuances in both the presentation

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<sup>216</sup> S. Poole, 'For the Benefit of Example': Crime-Scene Executions in England, 1720–1830', in R. Ward (ed.), *A Global History of Execution and the Criminal Corpse* (Basingstoke: Palgrave Macmillan, 2015), p. 75. For the Scottish experience of crime scene executions in this period see R. Bennett, 'An Awful and Impressive Spectacle: Crime Scene Executions in Scotland, 1801–1841', *Crime, History & Society*, 21 (1), 2017, pp. 101–124.

<sup>217</sup> For the use of the gibbet in England see Z. Dyndor, *The Gibbet in the Landscape: Locating the Criminal Corpse in Mid-Eighteenth-Century England*, in R. Ward (ed.), *A Global History*; S. Tarlow & Z. Dyndor, *The Landscape of the Gibbet*, *Landscape History*, 36 (1) 2015, pp. 71–88; S. Tarlow, *The Golden and Ghoulish Age of the Gibbet in Britain* (Basingstoke: Palgrave MacMillan, 2018), pp. 33–78. For the Scottish experience see R.E. Bennett, *Capital Punishment and the Criminal Corpse in Scotland, 1740–1834* (London: Palgrave Macmillan, 2018) pp. 187–213.

<sup>218</sup> Of the commendable early work that has been done on execution in this period, it is notable how much its focus is on the press reports of executions. For Northampton, Lincoln and Norfolk respectively see, Z. Dyndor, 'Death Recorded: Capital Punishment and the Press in Northampton, 1780–1834', *Midland History*, 33 (2) 2008, pp. 179–195; J. Tulloch, 'The Privatising of Pain: Lincoln newspapers, "mediated publicness" and the end of public execution', *Journalism Studies*, 7 (3) 2006, pp. 437–451; J. Walliss, 'Representations of Justice Executed at Norwich Castle: A Comparative Analysis of Execution Reports in the Norfolk Chronicle and Bury and Norwich Post, 1805–1867', *Law, Crime and History*, 3 (2) 2013, pp. 30–51; J. Walliss, 'The Great Portion of the Scum of Society? Representations of Crowds in the Lancashire Press, 1830–1868', *Law, Crime and History*, 6 (2) 2016, pp. 71–90.

<sup>219</sup> D. Bentley, *Capital, Capital Punishment in Northern England 1750–1900*, (Sheffield, 2008) p. 100. Poole, 'For the Benefit', p. 16. The story of Scotland had, until recently, been similarly neglected but Bennett's comprehensive study has noted that this steady transfer of execution from 'outside of urban centres' to more 'central urban locations' can also be seen in late eighteenth-century Scotland, citing the transfers in Aberdeen (1783) and Perth ('late 1780's') amongst others. Bennett, *Capital Punishment*, p. 133.

and reception of execution is essential, as Wilf has argued, in order to understand 'how power relations inform....the criminal law.'<sup>220</sup>

In investigating the spectacle of execution this chapter will take a tripartite structure. Firstly, a brief assessment of the quantitative aspect of capital punishment will be undertaken. Whilst this thesis does not intend to undertake a detailed quantitative discussion, the figures are essential to contextualise the decision-making processes regarding execution in the region. As such, an overview of nineteenth-century execution rates and the crimes prosecuted will be undertaken and set in context against their eighteenth-century counterparts. Secondly, a detailed examination of both the changing geographical location of sites of execution and the presentation of the execution spectacle will be undertaken in each county (Durham, Northumberland and Newcastle). It will be shown that in the North East there was no one unified change. In fact, procedure varied dramatically from region to region and, particularly in the cases of Newcastle and Northumberland, was often the result of experimentation and the reaction to immediate circumstances or crises. Furthermore, it will be shown that previous studies have incorrectly placed Northumberland at the tail end of a period of dramatic nineteenth-century change. Instead, it will be shown that Northumberland was in fact arguably the innovator of the three regions in a move to a more central location. Finally, the chapter will examine the changing nature of the scaffold itself. In this period, the architecture of death changes dramatically from an open cart, to an 'engine of death', a dramatic, professionalized and menacing structure.<sup>221</sup> These changes had lasting effects on both the proximity of the crowd to the condemned and what was actually seen of the execution itself, thus dramatically changing the visual spectacle of execution and challenging assumptions of what role the crowd now played in the theatre of execution.

### **Contextualising capital punishment in the North East**

Earlier studies of eighteenth-century execution in the North East have noted both the

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<sup>220</sup> Wilf, 'Imagining Justice', p. 51.

<sup>221</sup> This florid description of the gallows appeared in a report on the final public execution in Durham, that of Matthew Atkinson in 1865. *Newcastle Chronicle*, 18<sup>th</sup> March, 1865.

‘paucity’ of hangings in the region and the ‘long periods’ without any at all;<sup>222</sup> also, particularly of eighteenth-century Durham, both a higher number of executions and a higher percentage of capitally indicted felons being executed in the first half of the century.<sup>223</sup> More recently national quantitative studies on capital sentences for property offences have argued convincingly for a ‘stark centre-periphery divide’ in the application of capital punishment with the North East, alongside Cornwall and parts of Wales as areas with the lowest execution rates relative to the population.<sup>224</sup> This absence of execution is particularly pronounced in Newcastle; contemporary reports of the early eighteenth-century frequently recorded the sporadic application of punishment. Reporting on a double execution on August 13<sup>th</sup>, 1733, M.A. Richardson noted that one magazine of the time stated that ‘no person in the town had been hanged for thirty years past.’<sup>225</sup> Some scholars have argued that this may have created the ‘reverse of the satiety’ which Linebaugh argued had affected London executions.<sup>226</sup> Put simply, an absence of execution gave the spectacle a greater deterrent effect.

Where distinctions have not been drawn though in these earlier studies is the actual physical location of executions in the region. In the case of Newcastle, to properly contextualise the eighteenth-century execution spectacle one must remember that until 1805 many of Northumberland’s prisoners were hanged on the nearest piece of Northumberland ground, just outside Newcastle’s Westgate.<sup>227</sup> When one revisits the figures for executions between 1750-1799, figure 1, we see that 22 executions took place in Northumberland against only 11 in Newcastle. On first appearance this is a stark contrast, however, when one breaks down these hangings by location six of

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<sup>222</sup> Rushton & Morgan, *Rogues, Thieves*, p. 141.

<sup>223</sup> J. Smith, ‘The Punishment of Capital Felonies in County Durham 1707-1819’, *Durham County Local History Society Bulletin*, 20 (October, 1997). p. 21.

<sup>224</sup> Surveying between 1750-1775 King and Ward noted the execution rates of these areas as being between 0.00-0.14% per 100,000 population per annum as opposed to London’s 2.01-3.85%. King & Ward, *Rethinking*, p. 167.

<sup>225</sup> M. A. Richardson, *The Local Historian's Table Book, of Remarkable Occurrences, Historical Facts, Traditions, Legendary and Descriptive Ballads, &c* Vol 1. (London: R Smith, 1841). p. 378. Accessed 18<sup>th</sup> March, 2017. <https://books.google.co.uk/books?id=ThgHAAAAQAAJ&>

<sup>226</sup> Morgan and Rushton, *Rogues and Thieves* p. 144.

<sup>227</sup> Previous studies have stated that those charged for Murder were executed at Westgate, believing it to be a result of the ‘tight time restraints’ imposed by the 1752 Murder Act. *Bentley, Northern England*, p. 100. Whilst, it is undoubtedly true that the majority were undertaken at Westgate, it was not exclusively used for hanging Murderers, of the six executions between 1750-1805 outside Newcastle’s Westgate, only four were for murder the other two for housebreaking and robbery.

these Northumberland executions took place at Westgate, on the town walls of Newcastle. In that sense, they were far more likely to be witnessed by residents of Newcastle than by the disparate communities of sprawling Northumberland. When the figures are recalibrated by location, see figure 2, there were 17 executions that took place at Newcastle or outside Newcastle's Westgate, and 16 that took place, in Fair Moor in Northumberland (approximately 16 miles North of Newcastle and two miles North West of Morpeth). In as much, whilst it may have been less likely for a convict to be hanged in Newcastle, a resident of Newcastle in the eighteenth-century was arguably as likely, if not more, to be near an execution than their neighbouring residents would have been in Northumberland.<sup>228</sup>

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<sup>228</sup> Although, the gallows still stood till 1811 they were never used again. Reports in 1827, noting of Westgate that 'above the site of the old gate, has lately been enlarged and improved by several very neat and commodious houses...each side of the road that ascends to the toll-gate is now almost covered with new buildings.' E. Mackenzie, *Historical Account of Newcastle-Upon-Tyne Including the Borough of Gateshead. Newcastle-upon-Tyne:* (Mackenzie and Dent: Newcastle, 1827). p. 194. British History Online, accessed March 18, 2019, <http://www.british-history.ac.uk/no-series/newcastle-historical-account> It is worthy of note that it may not have been clear to all that Northumberland prisoners were no longer executed on the site as Mackenzie also recorded that 'a gallows stood formerly on the Northumberland side of this runner; and a temporary one is still occasionally erected on the same scite (sic), for the execution of criminals convicted of murder belonging to that county.' p. 194. The distinction regarding Northumberland's Westgate and Fair Moor executions becomes less important in the period of focus here as only one execution took place outside Newcastle's Westgate, in the nineteenth-century, that of Thomas Clare in 1805. *The Confession and Dying Words of Thomas Clare. Who was executed on Friday, August 16, 1805, at the West Gate, near Newcastle upon Tyne, for the wilful Murder of William Todd, late of Harley, Pitman.* (D. Bass: Newcastle, n.d). NCL Local Broadside (L.029.3).



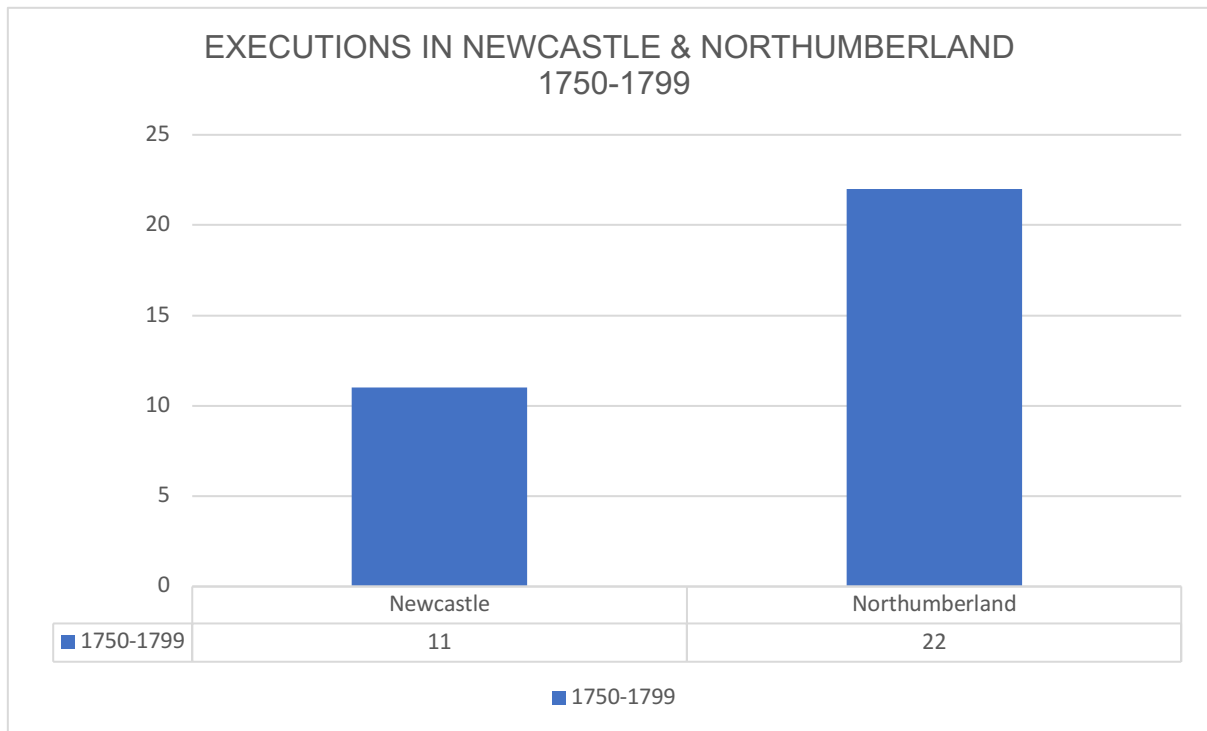


Figure 1 – Executions in Newcastle and Northumberland 1750-1799. Source: Assize Court Records.

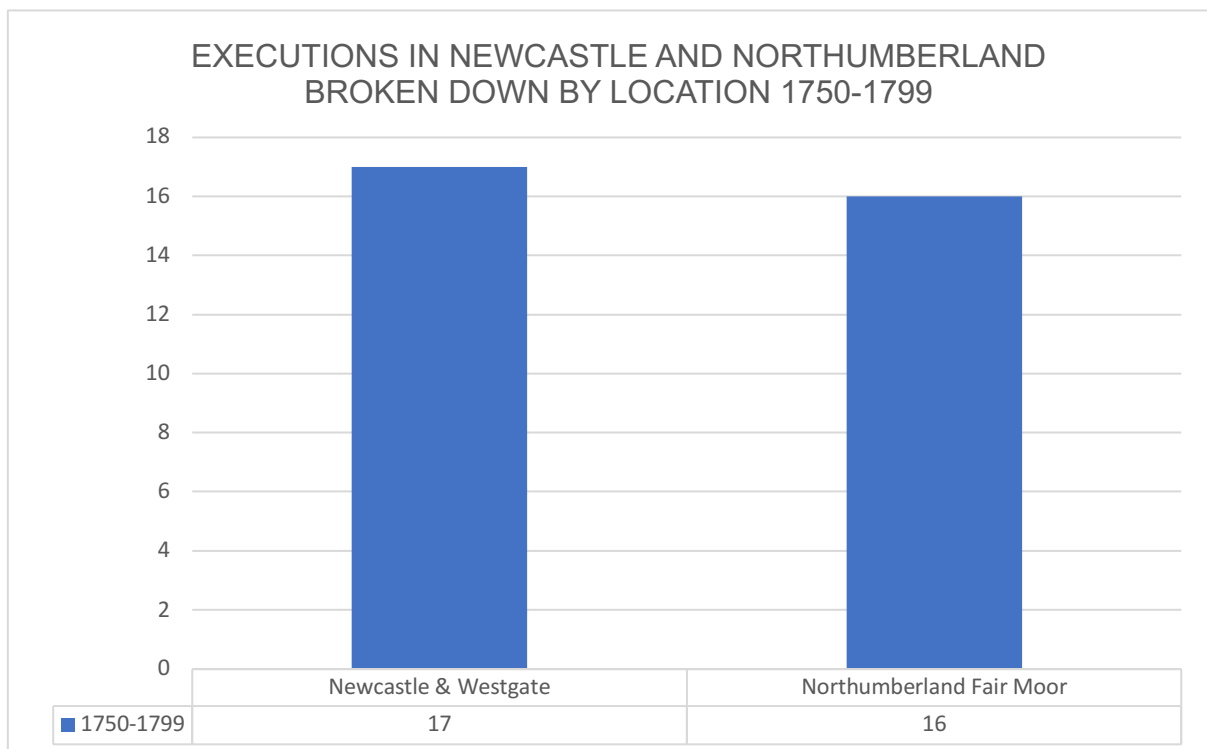


Figure 2 – Executions in Newcastle and Northumberland 1750-1799 broken down by execution location. Source: Assize Court Records

Between 1800 and 1868, there were a total of 35 executions in Durham, Newcastle and Northumberland, equivalent to roughly one every two years across these regions. Figures 3 and 4 illustrate that Durham was responsible for just shy of half of all the executions in this period, 17 (49%), whilst Northumberland undertook 12 (34%) and Newcastle 6 (17%). These figures mask long periods in which the individual regions undertook no executions, for instance in the 1830s, and between 1850-1868, Northumberland did not engage the hangman. Similarly, Newcastle undertook no executions in the 1800s, 1830s and 1850s, whilst Durham had at least one execution per decade. Testament to these long gaps can be seen in a report on the state of crime and prisons nationally, written in 1838, that noted the views of the Keeper at Morpeth Gaol, Mr. Blake.

Mr. Blake states there has not been much crime in the county of late years, and...there is considerably less than there was when he was young...At that time, executions were common. Mr. Blake remembers 6 in one year; whereas, 16 years have now passed without a single execution, and, at the same time, many fewer offences are committed with impunity now than formerly.<sup>229</sup>

Although there is notable disparity in the decades of application, when drawn over a longer period, we can see a remarkable concurrence in figures between Durham and Northumberland as figure 4 highlights; accounting for executions between 1740-1868 both undertook exactly 41 (41.4%) executions, compared to Newcastle's 17 (17.2%). It is also apparent that previously established national patterns are observable in the regions, most notably the spike in capital punishment in the 1780s. All three regions experienced a marked increase in executions; a result of the broader national contributors of rapid demobilization and concomitant increase in crime rates. These figures would appear to concur with King and Ward's assertion that, unlike in other periods in the eighteenth-century, these effects made 'inroads into penal policy on the margins.' However, when broken down by region it would appear that the application was slightly delayed in the case of Northumberland.

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<sup>229</sup>The following account is from the Keeper at Morpeth Gaol, Mr Blake. The report's author noting that owing to time restrictions he had not been able to view the gaol in Morpeth and so relied entirely on Mr Blake's account. *Third Report of the Inspectors Appointed Under the Provisions of the Act 5 & 6 Will. IV. C. 38. To Visit the Different Prisons of Great Britain in Parliamentary Papers* (hereafter PP), Vol 31, (HMO Stationery Office: London, 1838) p. 129. Accessed online, 30<sup>th</sup> January 2018 [https://books.google.co.uk/books?id=eqQDAAAAMAAJ&";](https://books.google.co.uk/books?id=eqQDAAAAMAAJ&)

Whilst Durham saw a marked rise in execution in the 1780's, 11 compared to three the previous decade, Northumberland saw its most dramatic rise in capital punishment in the 1790s; 12 executions in one decade compared to 10 between 1750-1790. This brings into doubt earlier assertions that by the '1790s execution rates everywhere had fallen back to pre-crisis levels.'<sup>230</sup>

When contextualised against the wider Northern Circuit, the stark contrast in application of execution in the North East is fully apparent. Between 1800-1868 Lancashire and Yorkshire were responsible for a minimum of 78% of the executions for the entire circuit, with several decades in which they accounted for 90% of all hangings on the circuit, 1800s, 1810s, 1830s, (see figure 5).<sup>231</sup> By comparison, the counties sampled in this study accounted for less than 10% of executions in the decades between 1800 and 1840, with a period low of 4.4% (five) of the circuits' executions in the 1810s. The North East counties reached a peak share of 17.86% in the 1840s (five executions), although this is largely accounted for by the precipitous decline in capital sentences in Yorkshire and Lancashire in that decade. By contrast, although very low, the North East counties' rates of execution remained remarkably stable in this period.

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<sup>230</sup> King & Ward, *Rethinking*, p. 171, 174.

<sup>231</sup> Broader Northern Circuit figures for execution are drawn from [www.capitalpunishment.co.uk](http://www.capitalpunishment.co.uk) and referenced against the findings for the region's sampled in this thesis.

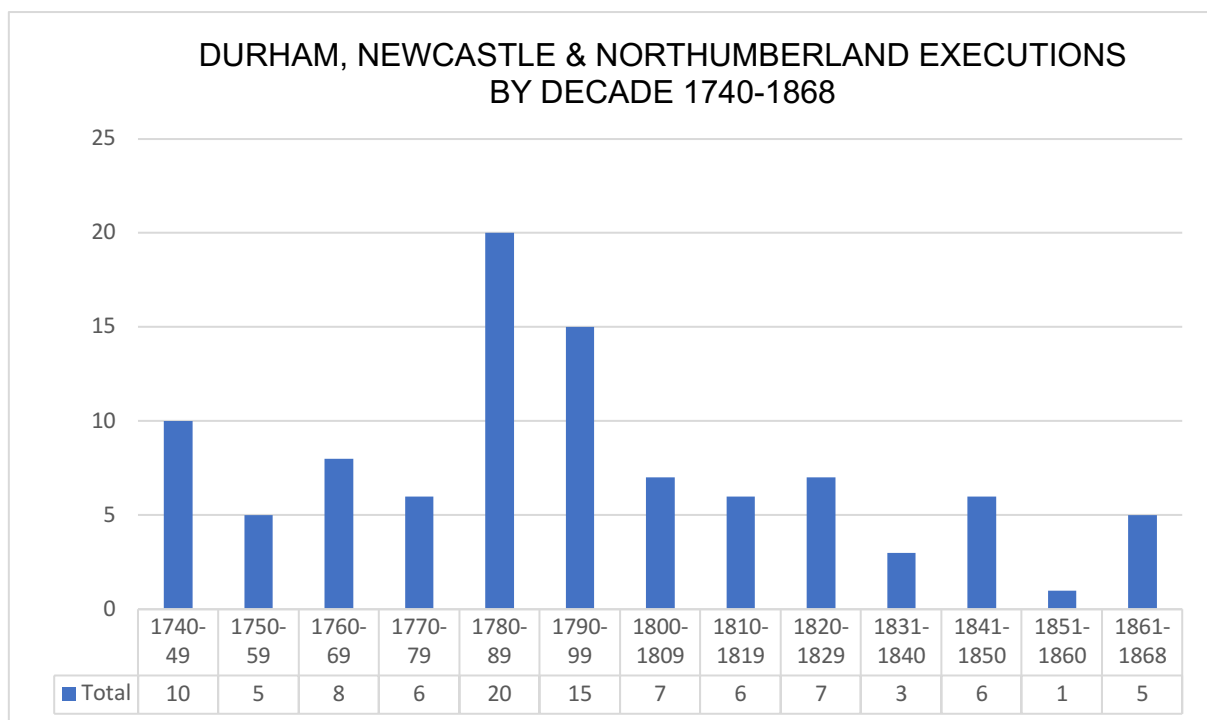


Figure 3 – Durham, Newcastle and Northumberland Executions by decade 1740-1868. Source: Assize Court Records.

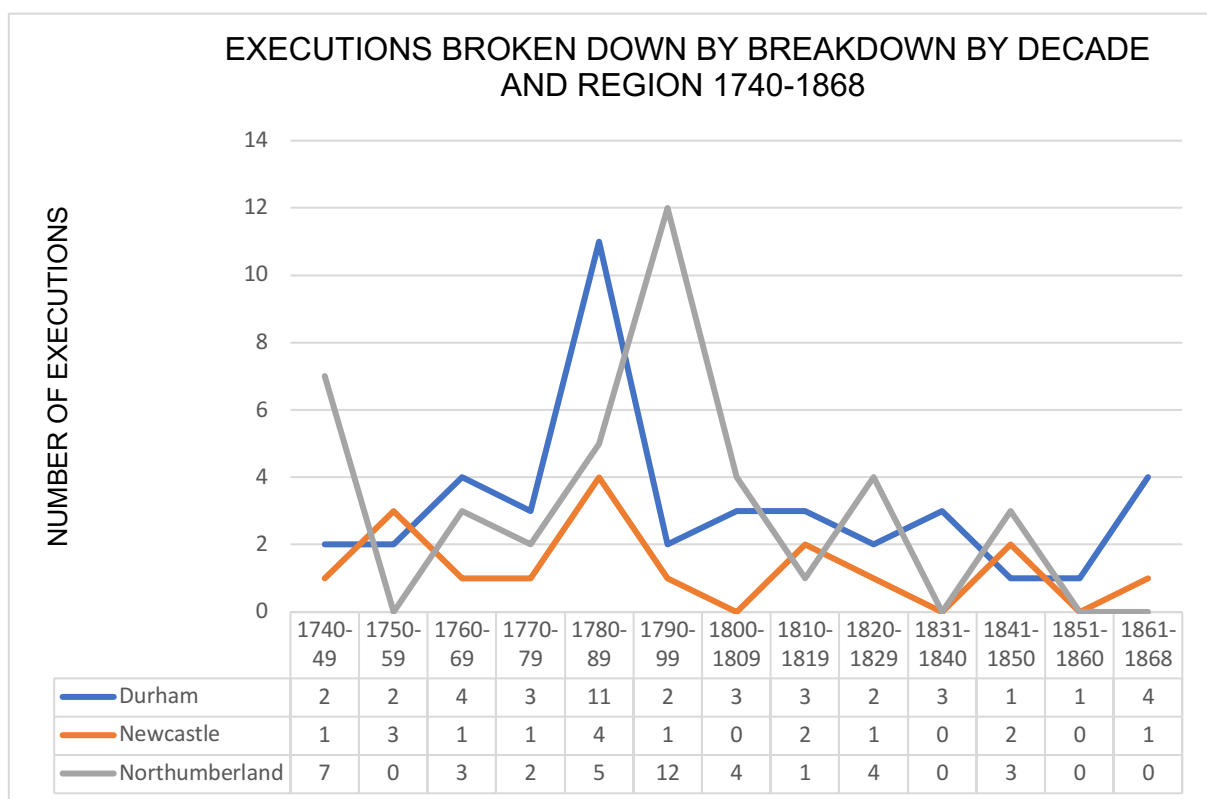


Figure 4 - Executions broken down by decade and region 1740-1868. Source: Assize Court Records and Records of the Palatinate of Durham.

Executions on the Northern Circuit. Breakdown by assize county and decade 1800-1868

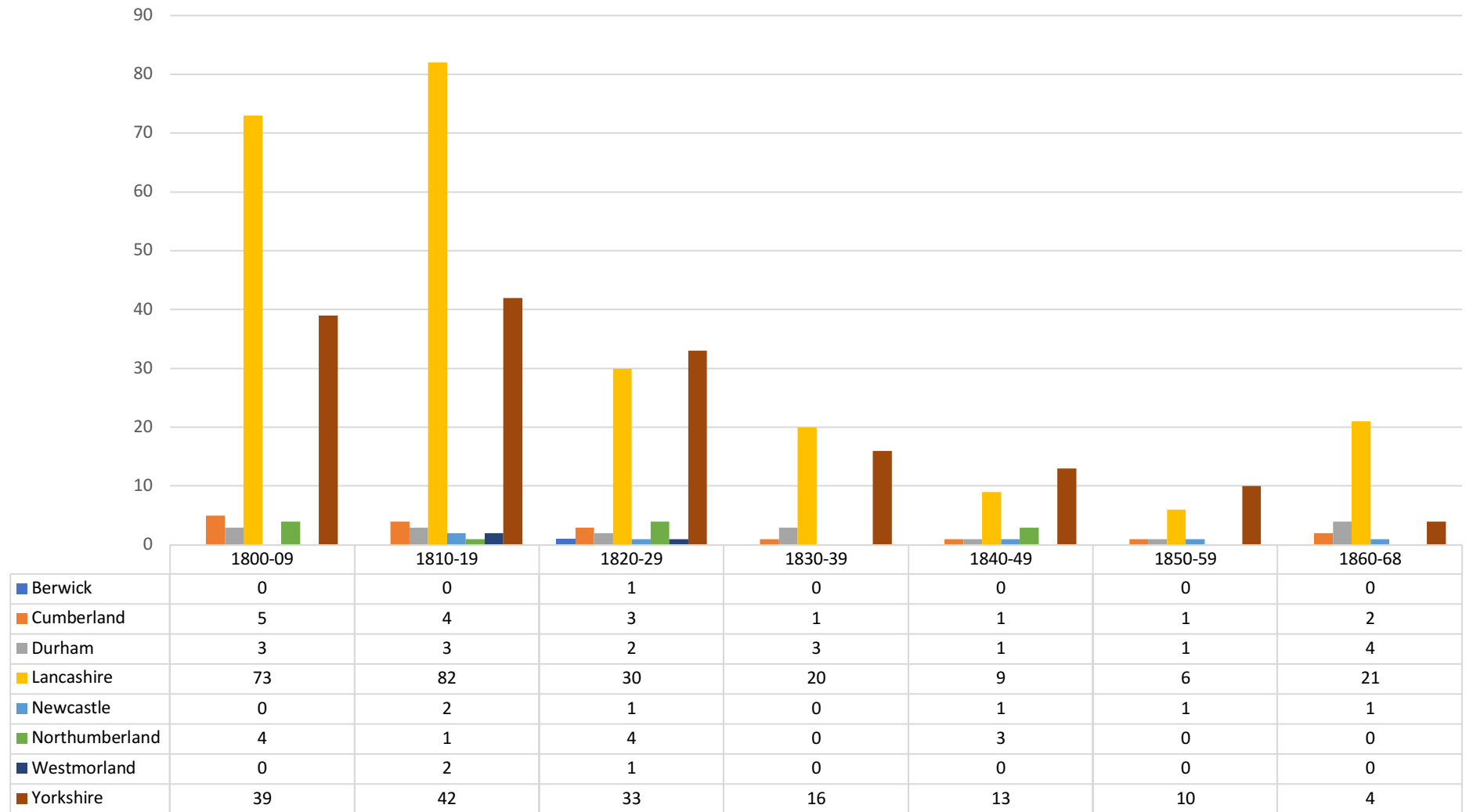


Figure 5 – Northern Circuit executions 1800-1868 broken down by county assize. Source [www.capitalpunishmentuk.org](http://www.capitalpunishmentuk.org)

## Crimes Convicted

Of the 35 executions, undertaken between 1800-1868, the vast majority, 22 (62.9%), were for the crime of murder. The remaining 13 executions were for a variety of offences including robbery 6 (17.1%), rape 2 (5.7%), and single instances of unnatural crime, attempted murder, forgery, sheep stealing and burglary. The predominance of murder here can be explained by the steady dismantling of the capital code through the sweeping reform of the 1820s and 1830s. Gatrell noted on the rapid dismantling of the capital statutes in the 1830s that there had been 'no more sudden revolution In English penal history.'<sup>232</sup> Whilst it is unquestionable that the 1830s saw a rapid retrenchment of capital statutes, effectively ending the era of the 'Bloody code', recent detailed quantitative analysis of execution in London has convincingly questioned the cliff edge nature of this change.<sup>233</sup> What was clear was that by the end of the 1830's the era of the so called 'Bloody Code' was dead. Where once a convict could be hanged for up to two hundred different offences, now 'only Murderers were actually executed.'<sup>234</sup> The figures for the North East are in line with this transition, the final executions for crimes other than murder taking place, in Northumberland and Durham, in 1822.<sup>235</sup> In Newcastle, the transition happened

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<sup>232</sup> Gatrell, *Hanging Tree*, p. 9.

<sup>233</sup> In his detailed assessment of the execution and pardon rates in London between 1730-1837, Devereaux has sought to show that the men responsible for the administration of death sentences were 'increasingly more thoughtful about, and responsive to changing currents in public opinion and sentiment' than previous studies have allowed for. S. Devereaux, Execution and Pardon at the Old Bailey 1730-1837 *American Journal of Legal History*, 57 (4), (December, 2017), p. 491.

<sup>234</sup> 'By the 1840s, only those found guilty of the most serious offences (murder, wounding, violent theft, arson, sodomy) were sentenced to death (though only murderers were actually executed).' Digital Panopticon, accessed 11<sup>th</sup> September, 2018, <https://www.digitalpanopticon.org/Punishments, 1780-1925>.

<sup>235</sup> At Northumberland Mark Lawson and William Currie were hung for the Robbery of Henry Thompson on his return from Fair Day at Morpeth and at Durham, Henry Anderson was hung for the rape of Isabella Ramshaw, a child. *An Account of the Trial and Execution of Mark Lawson & William Curry*, (Summers: Sunderland, n.d.), JJC: Execution and Murder Folder 6 (39). Reporting on Anderson's execution one broadside noted as 'somewhat strange' that Anderson's uncle George Atcheson was hung at Durham in 1819 for the rape of an infant and his brother had been tried a few years prior for the same crime. The *Durham County Advertiser* noted the same, naming Henry's brother Valentine. *Particulars of the Life, Trial and Execution of Henry Anderson Aged 33*, (Hogget, Durham, n.d.), NCL Local Broadside (L.029); *Durham County Advertiser*, 9<sup>th</sup> March, 1822.

considerably earlier, with James O'Neil being the last person to suffer death for a crime other than murder.<sup>236</sup>

## Gender

Of the 35 executions that took place between 1800-1868 in the regions sampled, 34 were men and only one female, equivalent to 3% of all executions.<sup>237</sup> The historical disparity between female and male execution figures is well documented, previous studies of execution noting the general reluctance to hang women as being 'characteristic of English law in action.'<sup>238</sup> However, these figures signify a marked decline from the decades immediately prior to the turn of the century. Between 1790-1799, 15 people were executed in the region of whom four were women (27%). In her figures for execution rates in Scotland between 1740-1834, Bennett noted that of the 505 executions that took place 47 were for women, accounting for 9.3% of the total number of executions undertaken.<sup>239</sup> Comparing statistics from the same period, the North East figure appears broadly in line, if slightly higher, with ten women executed from a total of 86 executions, accounting for 11.63%. As has been noted in Bennett's study of Scotland, these figures mask long periods when no female executions took place and notable spikes.<sup>240</sup> The peak decade for female execution was the 1790s, during which time four women were executed. These figures include the executions of sisters Jane and Eleanor Clarke, part of the notorious Winters gang, whose crimes are detailed in chapter five. Their association

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<sup>236</sup> James O Neil was hung on the Town Moor on 7th September 1816 for Highway Robbery. *A True and Particular Account of the Trial and Execution of James O'Neil*, (Marshall: Newcastle, n.d.) NCL Local Broadside (L.029).

<sup>237</sup> It is worthy of note that the only nineteenth-century execution to take place in Berwick was that of Grace Griffin, a woman. Similarly, the last execution before Griffin's, in 1758, was also a woman, one Margaret Dryden. Testament to the rarity of the spectacle in Berwick can be seen in John Sykes' history of the North East in which he notes the 'immense crowd' at Griffin's send off, believing it to be 'as there had not been an execution there since May 10<sup>th</sup> 1758.' J. Sykes, *Local records; or, Historical register of remarkable events: which have occurred in Northumberland and Durham, Newcastle upon Tyne, and Berwick upon Tweed, from the earliest period of authentic record, to the present time; with biographical notices of deceased persons of talent, eccentricity, and longevity, Volume 2* (Newcastle: John Sykes, 1832), p. 166. Accessed 10 October, 2017.

<https://books.google.co.uk/books?id=eqQDAAAAMAAJ&>; *An Account of the Crime, Trial and Execution of Grace Griffin at Berwick Upon Tweed....For the Murder of Her Husband*, (Marshall: Newcastle, n.d.) NCL Local Broadside (L.029.3). For an assessment of Dryden's case see Morgan and Rushton, *Rogues, Thieves*, p. 123.

<sup>238</sup> Morgan and Rushton, *Rogues and Thieves*, p. 118

<sup>239</sup> Bennett, *Capital Punishment*, p. 36.

<sup>240</sup> There were no woman executed in the regions sampled in the 1740s, 1770s, 1800-1828 and 1830-1868.

with the notorious William Winter, eventually gibbeted, may well have sealed their fate.<sup>241</sup> With the exception of the 1790s female execution never rose above two cases per decade in the years between 1740-1868. In the single case of female execution in the nineteenth-century across the regions, that of Jane Jameson in Newcastle in 1829, the crime was murder, Jameson having killed her mother. This would appear in line with recent studies of Scotland which have noted that in 87% of the cases of female execution between 1740-1834, the victim had been a family member.<sup>242</sup>

Finally, when set against the national picture, illustrated in figure 6, we see a continuation of the stark divide highlighted between London and the regions in the eighteenth-century. Using Gatrell's figures for executions in England and Wales between 1811-1830 we see that the North East regions sampled, in any one decade never amounted to more than 1.05% of all executions in England and Wales, in 1821-1830. This in itself was a marked rise from the decades immediately before and after, 1811-1820 (0.68%) and 1831-40 (0.59%). By comparison Old Bailey executions in this period never dropped below 23% of all executions in England and Wales.<sup>243</sup>

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<sup>241</sup> Reports noting of Winter that 'such was the horrid depravity of him who now suffered that he has not been at liberty six months together during the last eighteen years.' The same publication recorded that Winter's father and brother were hung two years prior in Morpeth. In fact, they had both been hung together four years earlier on the 6<sup>th</sup> August, 1788, charged with Housebreaking at the mansion of the Charlton Family at Hesleyside, Northumberland. *The New and Complete Newgate Calendar; Or, Villany Displayed in All Its Branches* Volume VI. (Hogg: London, 1796) p. 119. Accessed 1<sup>st</sup> January, 2019. <https://play.google.com/store/books/details?id=3glcAAAACAAJ&>.

<sup>242</sup> 30 out of 36 cases. In 23 of these cases the victim was the woman's child. Bennett, *Capital Punishment*, p. 37.

<sup>243</sup> Gatrell, *Hanging Tree*, p. 617.



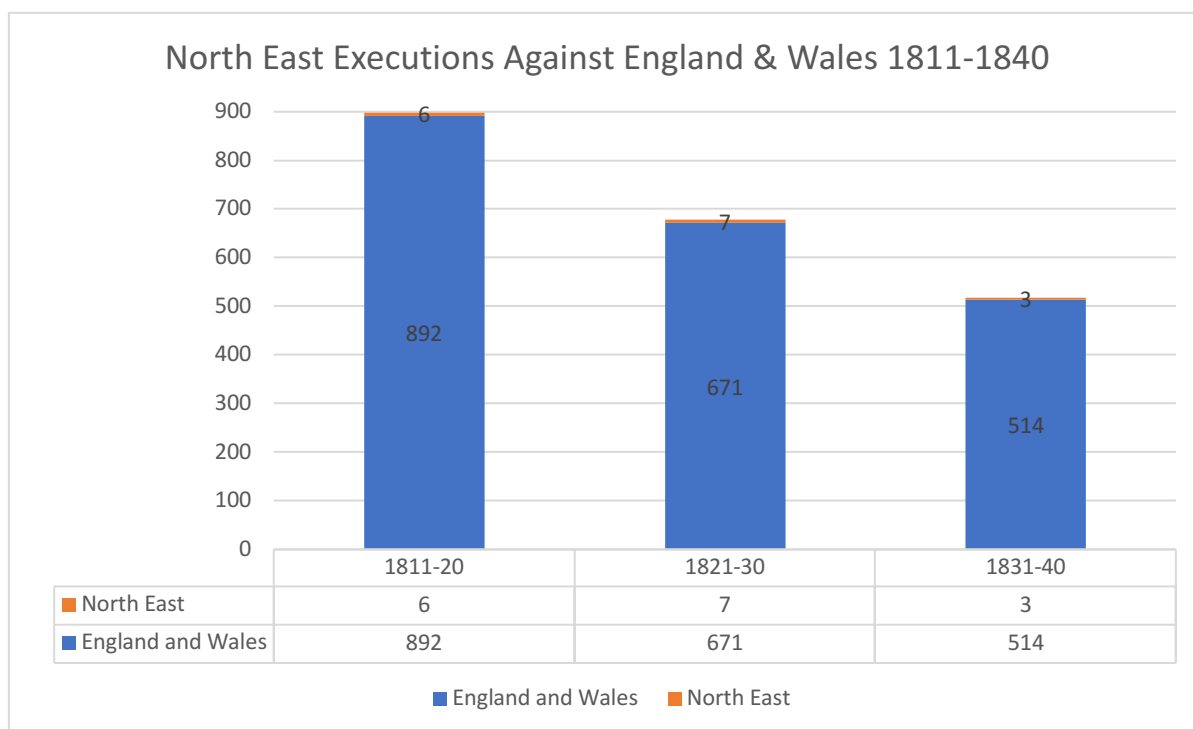


Figure 6 – North East Executions Against England & Wales 1811-1840. Source: Assize Court and Records of Palatinate of Durham. England and Wales figures drawn from Table 2. Capital Convictions and executions, England and Wales 1805-1840', Gatrell, *Hanging Tree*, p.617

Much like their eighteenth-century counterparts then, these were comparatively rare events, most notably in Newcastle. However, their comparative rarity to the capital does not mean they were any less experienced or attended by the public. Far from the sprawling metropolis of London, it was arguably harder to avoid an execution in these areas than it was to see it. Writing on reports of Jane Jameson's execution of Newcastle's Town Moor in 1829, local Surgeon Thomas Giordani Wright noted how he had to actively avoid the sight. He noted that from his city centre lodgings, the procession 'passed along' his street and 'within sight of my window', but he chose not to look as he 'did not have the curiosity to join in.'<sup>244</sup> We have then a picture of the incidence of execution in the nineteenth-century we must turn now to its application and reception.

<sup>244</sup> Taken from diary entry for March 7<sup>th</sup>, 1829. A. Johnson, *The Diary of Thomas Giordani Wright, Newcastle Doctor, 1826-1829*, (Surtees Society, Boydell Press: 2001) p. 293. Giordani moved to London a few months later where he enrolled as a student at London University. p. 4.

## Locating the gallows: The changing geography of nineteenth century executions

In his work on the crowd in seventeenth and eighteenth century executions, Laqueur asserted that the relevant authorities for administering hangings showed a 'perverse lack of interest' in their solemnity and this permeated all areas of their presentation, ultimately making them 'unpromising vehicles for the ceremonial display of power.'<sup>245</sup> Perhaps chief amongst these failings was their 'unprepossessing' locations, places as such that provided an unhelpful background for conjuring up the awesome might of the state. Even the Tyburn gallows, the epicentre of English execution, were positioned at the 'exterior of a barnyard.'<sup>246</sup> Indeed, previous studies have noted the 'remarkably consistent' location of gallows across Europe.<sup>247</sup> With the exception of crime scene executions, these structures were predominantly placed besides major roads or thoroughfares and often marking the boundaries of the governing judicial authority.<sup>248</sup> Whilst the reasoning behind their placement has recently come under questioning, the consistency of their location is clear in the North East.<sup>249</sup>

The Newcastle gallows appear in early records, most notably Henry Bourne's 1736 history of Newcastle, as a demarcater of the boundaries of Newcastle's Town Moor to the north of the town, a large expanse of common land more readily associated with travelling fairs and race days.

'from thence to the Bounders set towards the Town of Newcastle, unto a Gallows set between the trees or posts of the *Gall House*, so that one post is placed and set in the Marches, between the Fields and Lands of the Prior of

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<sup>245</sup> Laqueur, 'Crowds, Carnival and the State in English Executions, 1604-1868', in A. L. Beier, D. Cannadine & J. M. Rosenheim (eds.), *The First Modern Society: Essays in English History in Honour of Lawrence Stone*, (Cambridge: Cambridge University Press, 1989), p. 309.

<sup>246</sup> Devereaux, 'Recasting the Theatre of Execution', pp. 309-311

<sup>247</sup> J. Coolen, Places of Justice and Awe: the topography of gibbets and gallows in medieval and early modern north-western and Central Europe, *World Archaeology*, 45 (5), 2013. pp. 762-779; P. Spierenburg, *The Spectacle of Suffering. Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience* (Cambridge: Cambridge University Press, 1984), p. 45.

<sup>248</sup> On the locations of the limited number of crime scene executions in England see S. Poole, 'For the Benefit of Example' pp.71-101

<sup>249</sup> Focusing on the Netherlands, Lower Austria and Shetland, Coolen has argued convincingly that despite the consistency in placement, the reasoning behind their siting's are multifarious. Coolen, *Places of Justice* pp. 762-779.

*Tinmouth*, and the Fields and Grounds of Newcastle, and so extendeth unto the Quarrel-Dyke.’<sup>250</sup>

Similarly, in John Bourne’s 1786 history the following description appears ‘by the boundaries of the fields of Elswick on the south to the gallows,’<sup>251</sup> The position of the gallows on Armstrong’s 1769 map of Northumberland, see illustration 1, tallies with these descriptions. Similarly, Durham’s gallows were located on open land to the north of the city centre on a major thoroughfare road. An eighteenth century John Bielby road map indicates the gallows to the immediate north west of Durham on the road leading north, see illustration 2, commonly referred to as the Dryburn Gallows.<sup>252</sup> The origin of the name was believed to have been derived from the drying up of a stream following the execution of four Missionary Priests on the site in 1590. Reporting on the legend in 1839, Bishop R. Challoner, noted a letter written in 1707 by a Priest who had seen the reputed site some twenty years prior.

‘When Mr. Hill, Mr. Hogge, Mr. Holliday and Mr. Duke were put to death at Durham ‘1590’ a brook near the common gallows ‘other relations call it a well’ at the time of their execution ceased to flow, and has remained dry ever since, and is thence called Dryburn to this day. Above twenty years ago...I have been shown the hole from whence it issued and the marks of its former channel. This is a constant tradition here.’<sup>253</sup>

The veracity of the legend was called into question in Dent and Mackenzie’s 1827 history of the region.<sup>254</sup>

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<sup>250</sup> H. Bourne, *The history of Newcastle upon Tyne: or, the ancient and present state of that town* 1736. (Newcastle upon Tyne: J. White, 1736), p. 148. Bourne quote was drawn from a return to Chancery from 1357 describing the borders of the Town Moor. B. Redfern, *The Shadow of the Gallows: Crime and Punishment on Tyneside in the Eighteenth-Century* (Newcastle: Tyne Bridge Publishing, 2003).

<sup>251</sup> J. Brand, *The History and Antiquities of the Town and County of the Town of Newcastle* (Fleet Street: B. White & Son, 1789), p. 432. The site of the gallows on the North Road out of Durham would tally with the location of the County Hospital.

<sup>252</sup> Owen/Bowen, Road Map Darlington to Morpeth Map 28680, (c.1730) Accessed 11<sup>th</sup> December 2018 <https://www.antiquemaps.com/roadmaps/owenbowen/owenbowen1/>

<sup>253</sup> A Letter from John Yaxley, a Reverend Priest, dated July 17<sup>th</sup>, 1707, cited in R. Challoner, *Memoirs of Missionary Priests: And Other Catholics of Both Sexes, that Have Suffered Death in England on Religious Accounts, from the Year 1577 to 1684, Volumes 1-2* (Philadelphia: John. T. Green, 1839) p. 261. Accessed 19<sup>th</sup> December, 2018. <https://books.google.co.uk/books?id=-30PAAAAIAAJ&>

<sup>254</sup> The veracity of this assertion was called into question in Mackenzie’s nineteenth-century history in which he stated that ‘this place, however, was called Dryburne long before the execution’ citing proof of its existence in both St Margaret’s Register and St Oswald’s Registers. E. MacKenzie & M. Ross,

Nineteenth century records of Morpeth noted the site of Goose Hill on the southern bank of the River Wansbeck as the historical site where 'malefactors were executed'.<sup>255</sup> However, by the nineteenth century capitally condemned executions took place at or near Morpeth and in some cases, until 1805, outside the walls of Newcastle's Westgate, the nearest piece of Northumbrian land. Reports of eighteenth-century executions often referred to the site of execution in Morpeth as 'Fair-Moor near Morpeth', as at the 1789 execution of Thomas Young for Highway Robbery.<sup>256</sup> This was on the outskirts of the town of Morpeth on the road leading out of the town, approximately two miles from the centre.<sup>257</sup> The site of Fair-Moor would appear in line with Durham and Newcastle's sites of execution, sitting as it does to the north of the town and along a major route road north. All three locations then were markedly similar, execution sites on major roads to the north of the city from which the prisoners were tried, features that Poole has described as 'commonplace practice in most counties of eighteenth-century England.'<sup>258</sup> However, during the nineteenth-century these places of execution began to undergo a series of dramatic changes along fundamentally differing timelines and for markedly different reasons and in the case of Northumberland, far earlier than has been previously attributed to it. It was a period of experimentation in the presentation of execution and often one in which the nature of the decisions made were largely reactive to circumstance. It is to this period that we now turn.

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An Historical, Topographical, and Descriptive View of the County . An Historical, Topographical, and Descriptive View of the County Palatine of Durham & c. Volume 2. (Pilgrim Street: Mackenzie & Dent, 1834) p. 400. Accessed 7<sup>th</sup> September 2018. <https://books.google.co.uk/books?id=hziNAAAAMAAJ&>

<sup>255</sup> Hodgson, J. A history of Northumberland, in three parts, Part 2, Volume 2 (Newcastle: Charles Henry Cook, 1832), p.437. Hodgson's record appears to be drawn from a very loose and scant entry in a letter from one William Woodman. *Copy letter from William Woodman to unnamed person (probably John Hodgson) re memories of old gaol at Morpeth*. NRO SANT/BEQ/28/1/13/193.

<sup>256</sup> Richardson, *Local Historian's Table Book*, p. 325.

<sup>257</sup> Earlier studies of execution in the region have noted an erroneous entry in the Northumberland Quarter Sessions for 1727, regarding a gallows for Morpeth. The entry states the order that 'one be made & erected at Morpeth near the county Gaole by the Surveyor at the county's charge.' In one sense, this is a remarkably early instance of shift of the locus of punishment, but as the author points out, no execution took place near the county gaole, so the instruction can be easily misread. Northumberland Record Office, Quarter Sessions Order Book 1727-1742 Easter Sessions 1727. QSO7 cited in B. Redfern, *The Gallows Tree: Crime and Punishment in the Eighteenth-century Northumberland and Berwick Upon Tweed* (Newcastle: Tyne Bridge Publishing, 2013), p. 24.

<sup>258</sup> Poole, 'For the Benefit', p. 73. Given the link between capital punishment and the medical profession, made indelible by the Murder Act 1752, It is worthy of note that in all three instances in the North East hospitals or medical facilities now sit on or near the former sites of public execution; Durham's University Hospital, Morpeth's Northgate Hospital and Newcastle's Blood Donor Service. B. Redfern, *Gallows Tree*, p. 34.



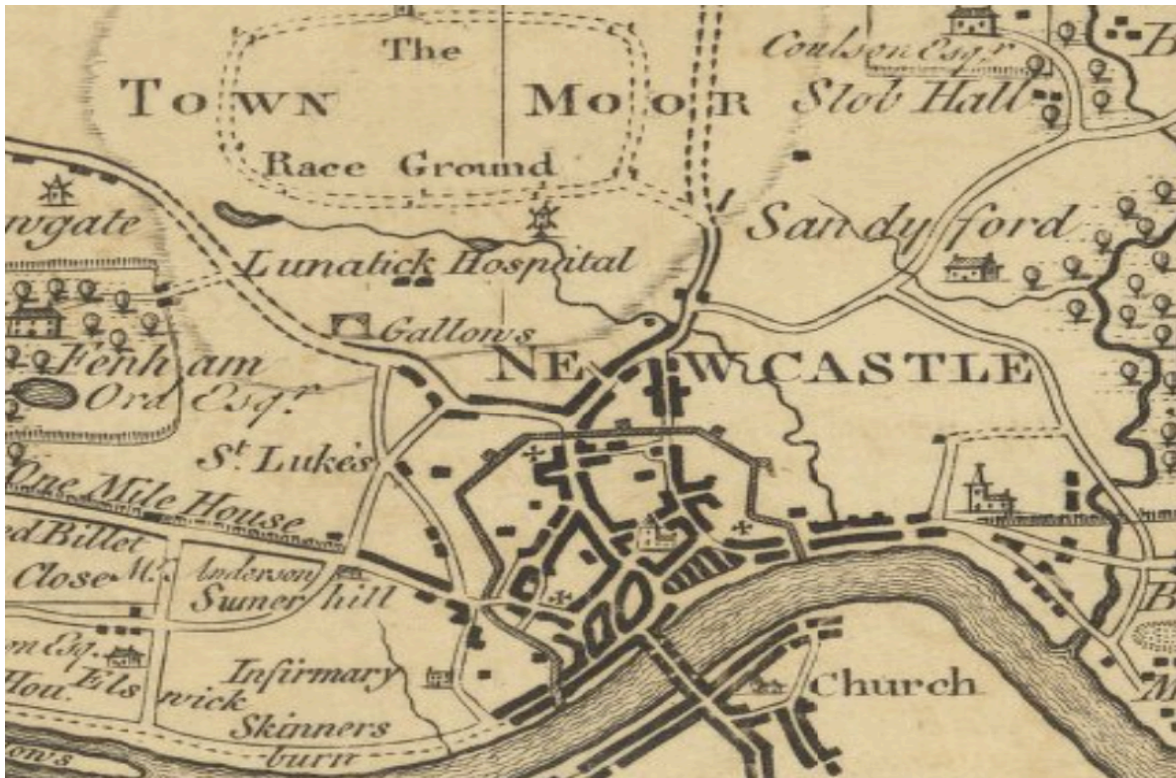


Illustration 1. The Gallows to the North of Newcastle illustrated in A. Armstrong, *A map of the County of Northumberland: with that part of the County of Durham that is north of the River Tyne also the Town of Berwick and its bounds*. [sheet 3], 1769. Map. 1:64,000 . MacMaster University Library. <https://digitalarchive.mcmaster.ca/islandora/object/macrepo%3A79588>. Accessed 11<sup>th</sup> January, 2019. Image published under Creative Commons Licence.



Illustration 2: Durham's Dryburn Gallows illustrated in J. Ogilby, *The continuation of the road from London to Barwick, beginning at York and extending to Chester in ye Street*. Scale not given. (17--). Durham University Library Special Collections (DUSC). DUL SD A02/11. Accessed 14<sup>th</sup> March, 2019. <http://iif.durham.ac.uk/index.html?manifest=https://iif.durham.ac.uk/manifests/other/pip/pip-23.json>. Reproduced by permission of Durham University Library.

## Relocating the spectacle

The first notable relocation of the execution spectacle in this period was in London. Execution moved from Tyburn, modern day Marble Arch, to the exterior of Newgate prison in 1783. However, prior to the relocation of the Tyburn gallows there had been a longer process of their removal from permanent view. In 1759, the gallows at Tyburn had been removed, following reports of possible vandalism and were replaced that same year by movable gallows.<sup>259</sup> From then on, the authorities only brought out the scaffold as and when required. The gallows therefore no longer played a part in the everyday visual landscape of London. Similarly, on transferral to Newgate a scaffold was constructed that was wheeled out, most often on the morning of the execution and ‘hammered into place’ outside the Debtor’s Door.<sup>260</sup> It was put away after the body had hung for the requisite hour, not to be seen again until required, a temporary status mirrored in the North East, as will be shown later in the chapter.

The reason for the eventual move to Newgate was twofold. Firstly, there was a desire by the relevant authorities to regain control over an increasingly chaotic spectacle. Secondly, it was a response to the rapid urban growth in the immediate locale, which had caused many local people and businesses to complain to the relevant authorities of its presence.<sup>261</sup> This was a phenomenon eventually replicated for nearly all forms of public punishments, which had been effectively removed from public site by the 1830s. Once essential signs of the awesome power of the state had increasingly become undesirable reminders of a brutal penal past, entirely at odds with increasingly gentrified city centres and the enlightenment values espoused therein.

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<sup>259</sup> ‘all the Cross Beams [had been] pulled down.’ *Whitehall Evening Post*, 16-19<sup>th</sup> June, 1759 cited in A. McKenzie, *Tyburn’s Martyrs: Execution in England 1675-1775* (London & New York: Hambledon Continuum, 2007) p. 6; A. Brooke & D. Brandon, *Tyburn: London’s Fatal Tree* (Sutton: Sutton Publishing, 2005), p.10.

<sup>260</sup> Detailing the execution of Courvoisier, at which Dickens and William Makepeace Thackeray were amongst the crowd. P. T. Murphy, *Shooting Victoria: Madness, Mayhem, and the Rebirth of the British Monarchy* (London: Pegasus Books, 2012), p. 94.

<sup>261</sup> Devereaux, ‘Recasting’, p. 136.

## Durham

The first notable relocation of the gallows on the Northern Circuit was in York in 1802, pictured in Illustration 3. Originally cited at Knavesmire, a woodcut of 1802 depicts the Knavesmire Gallows being transferred on a cart, by halberd bearing soldiers to York Castle.<sup>262</sup> As with London the decision for removal to the Castle was on the grounds that 'entrance to the town should no longer be annoyed by dragging criminals through the streets.'<sup>263</sup> Reporting on the transfer one newspaper stated, 'thus will be removed from one of the principal Roads leading to the city, that disagreeable nuisance, the Gallows; It is a truly wise and salutary measure.'<sup>264</sup>

Durham's eventual relocation of executions happened on similar grounds. By the turn of the nineteenth-century Durham's existing jail at the Great North Gate had become the source of serious traffic congestion. One of the people most frustrated by this inconvenience was the Prince Bishop, Barrington Shute of Durham. In an attempt to remedy the situation, he pledged £2,000 towards the building of a new gaol. The new site for the gaol was to be Old Elvet. The Borough of Elvet was founded in the 12<sup>th</sup> century and was to the immediate East of Durham Castle and Cathedral, across the River Wear, and accessed via a bridge. The initial construction of Durham Prison was an unmitigated disaster. Despite the foundation stone being laid in 1809, by Sir Henry Vane, to great fanfare, with bands and a 'volley of rifle shots' from the Durham militia, the building didn't take its first prisoners until 1819.<sup>265</sup> In the ten years between its commencement and completion, it was overseen by three architects. The first, Francis Sandys, was removed from his role following a huge overspend and, somewhat ironically, eventually imprisoned in the old gaol for theft. The second architect died during its construction and the third, Ignatius

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<sup>262</sup> 'The Knavesmire Gallows Removed to the Castle 1802', York Museums Trust, accessed June 15, 2016, [http://www.yorkmuseumstrust.org.uk/collections/search/item/?id=20002436&search\\_query=bGltXQ9MTYmQ0wINUIwJTVEPUZpbmUrQXJ0](http://www.yorkmuseumstrust.org.uk/collections/search/item/?id=20002436&search_query=bGltXQ9MTYmQ0wINUIwJTVEPUZpbmUrQXJ0).

<sup>263</sup> 'Executions in York: History of York,' accessed July 3, 2017, <http://www.historyofyork.org.uk/themes/executions-in-york>

<sup>264</sup> *York Herald*, 25th July, 1801.

<sup>265</sup> R. Cranfield, 'Durham Prisons in an Age of Change', *Journal of the Durham County Local History Society* 28 (May 1982) p. 34; Building costs were further supplemented by a county rate. Special County Rate for Gaol, 1809 DRO Q/F/10. Records also survive for the receipts following its completion Rate for new gaol, March 1818 - April 1820, DRO Q/F/11

Bonomi, eventually completed the structure.<sup>266</sup> The prison itself remains on the same site today and stands, as then, immediately behind Durham County Court, the modern day Crown Court.

Despite not receiving its first prisoners until 1819, when John Grieg was charged with the murder of Elizabeth Stonehouse in 1816, the adjoining Durham County Courts were chosen as the new site of execution. The last hanging in Durham had been that of Richard Metcalfe in 1805, for the murder of his infant son-in-law, taking place, as with others previous, at Dryburn. For Grieg's send off the construction of the scaffold itself will be discussed later in the chapter, but it was purpose built for the occasion and placed directly in front of the County Court. The County Court building, see illustration 4, had several clear advantages for the presentation of an execution. Its central, first floor windows, which lead out from the Grand Jury Room, were at a suitable height to remove the prisoner from direct contact or any chance of mingling with the crowd. As such the prisoner 'entered upon the fatal scaffold from that window.' Indeed, in its report of his execution the *Durham County Advertiser* noted the effect of this heightened scaffold stating that Grieg, 'did not appear to notice the populace assembled to witness the execution.'<sup>267</sup> Secondly, directly in front of the Court there was a semi-circular green, a large open space. Spaces for the crowd at 'semi-public' executions were often cramped and crushing was a serious issue, as will be shown at Newcastle later in this chapter. Thus, the relatively open space was a huge advantage for the authorities and would prevent any serious crush at Durham executions whilst simultaneously allowing for large numbers of spectators. With its raised platform, window entrance for the condemned and proximity to the court house, the executions that took place at Durham after 1816, bore a remarkable resemblance to the executions at Dam Palace in Amsterdam with which reformer Henry Fielding was so enamoured.<sup>268</sup>

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<sup>266</sup> M. Anderson, *Durham Executions from 1700 to 1900* (South Yorkshire: Wharnccliffe Books, 2007), p. 14.

<sup>267</sup> *Durham County Advertiser*, 24 August, 1816.

<sup>268</sup> Of Dutch executions Fielding noted, 'In Holland, the executions (which are very rare) are incredibly solemn. They are performed in the area before the fadthoufe and attended by all the magistrates. The effect of this solemnity is inconceivable to those who have not observed it.' H. Fielding, *An Enquiry into the Causes of the Late Increase of Robbers, &c* (A. Miller: 1751). p.196.

A Dutch execution, albeit a beheading, was depicted by an anonymous artist in 1778, *Execution of JBF Gogh in Amsterdam*, Rijks Museum. Accessed 10 September, 2018  
<https://www.rijksmuseum.nl/nl/collectie/RP-P-OB-84.998>



The transferal of the execution site therefore marked a grand departure in the staging of executions in the region. From a hanging administered off the back of a cart on unremarkable open land, devoid of any conspicuous signs of authorial power, to a controlled execution enacted in the locale of justice, a site 'Redolent with the signs of state power.'<sup>269</sup> From henceforth, a condemned man or woman on trial in Durham would be made fully aware from the first moments of his trial, that he stood mere feet away from the window that may well open on to the scene of his demise. The execution of Greig and those that followed, up until 1868, marked a tri-partite change in the presentation of execution at; the introduction of the new 'drop' technology, removal of the condemned from immediate contact with the crowd and the termination of the centuries old processional practice through the city.



Illustration 3: *The Knavesmire Gallows removed to the Castle 1802*. Image Courtesy of York Museums Trust. Accessed 17<sup>th</sup> March, 2019.

[https://www.yorkmuseumstrust.org.uk/collections/search/item/?id=20002436&search\\_query=bGItaXQ9MTYmQ0wINUIwJTVEPUZpbmUrQXJ0](https://www.yorkmuseumstrust.org.uk/collections/search/item/?id=20002436&search_query=bGItaXQ9MTYmQ0wINUIwJTVEPUZpbmUrQXJ0). Public Domain Licence.

<sup>269</sup> Laqueur, 'Crowds', p. 313.



COUNTY COURTS, DURHAM.

Illustration 4. County Courts, Durham. Etched by J. Archer, engraved for the History of Durham. 1834. Originally produced in E. MacKenzie and M. Ross, *An historical, topographical, and descriptive view of the county palatine of Durham...* volume 2. Reproduced by permission of Durham University Library.

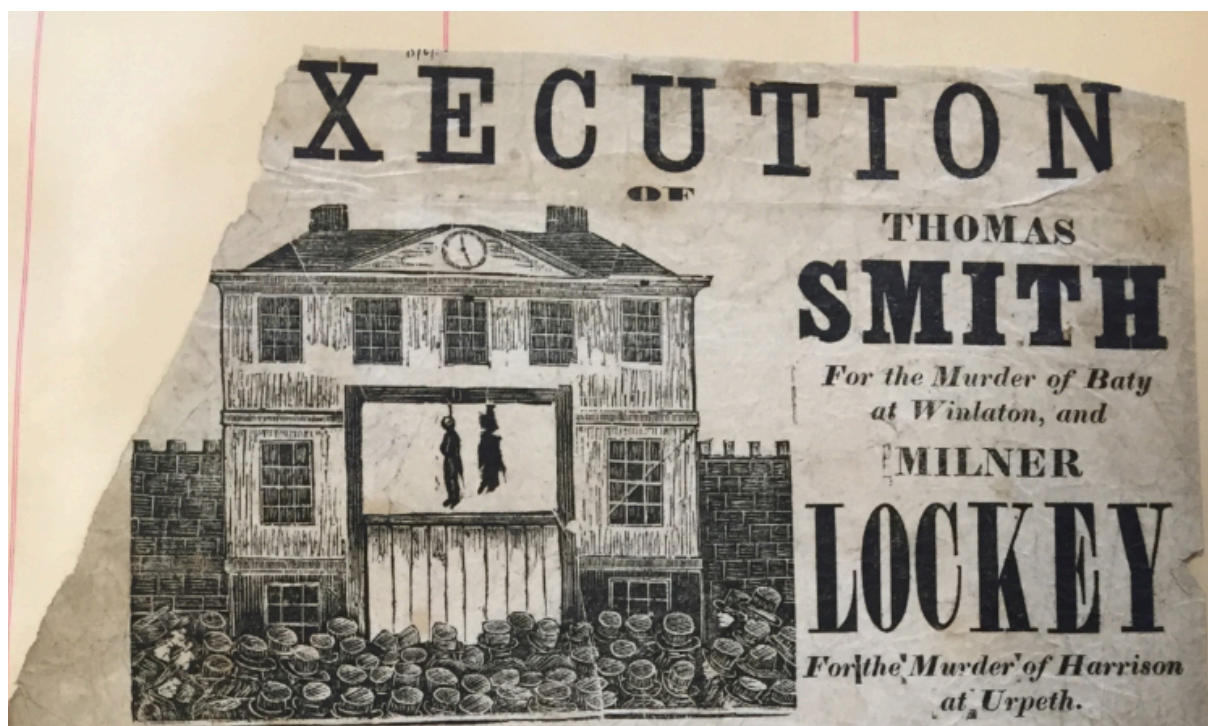


Illustration 5: *Execution of Thomas Smith and for the Murder of Baty and Winlaton and Milner Lockey for the Murder of Harrison and Urpeth.* NCL Local Broadside 1813-34 (L.029.3). The dating of the collection in which this broadside resides is erroneous as Smith and Lockey were executed at Durham in 1860. The full broadside details the crime and execution and carries a 'copy of verses' but is significantly damaged, with the attribution of printers and date extant. Notably an identical image is used for a broadside in the same collection detailing the execution of Matthew Atkinson in 1865, the only change being the removal of the rightmost figure on the gallows.

## Northumberland

In his study of Capital Punishment in Northern England Bentley noted of Northumberland that, until 1846, 'the Morpeth gallows were situate (sic) at Fairmoor, an area of open fields to the North of the town.'<sup>270</sup> This assertion has become a staple feature of compendiums of punishment and later studies when addressing provincial execution.<sup>271</sup> Owing to this Northumberland has often been marked out as a particularly late adoptee of wider changes in the presentation of capital punishment. However, whilst it is the case that an execution didn't take place at Morpeth outside the prison walls until 1846, this erroneous assertion about the longevity of Fair Moor as the site of hangings has masked an earlier and substantive change in both the location and presentation of execution in the region. When taken into consideration, far from a 'laggard' participant, Northumberland could be argued to be something of an innovator in the region for moving execution to a more controlled, central location.

At Morpeth's first execution in the nineteenth-century, that of John Scott hanged for sheep stealing in 1801, contemporaneous reports available are scant and only briefly detail the crime and that an execution took place 'at Morpeth.'<sup>272</sup> Similarly, later histories simply note that he was 'executed at Morpeth, pursuant to his sentence.'<sup>273</sup> However, reporting on the second execution in 1808, that of Martyn Bryan, the following description is given by a broadside 'he was brought from the gaol, and conveyed in a cart, to a field near Morpeth, called Low Stanners, where a gallows had been erected for the purpose.'<sup>274</sup> Likewise, the following year, at the send of John Boyd, one broadside noted the location of the 'the fatal spot' as at 'a place

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<sup>270</sup> Bentley, *Capital Punishment*, p. 100. The problem possibly arises from Bentley's history being a sweeping one of many regions and as his discussion of the variations in presentation of execution in the North of England barely extends to a few pages.

<sup>271</sup> Capital Punishment U.K. accessed 14<sup>th</sup> January, 2019, <http://www.capitalpunishmentuk.org/explaces2.html>. Poole, 'For the Benefit'. p. 75.

<sup>272</sup> *Carlisle Journal*, 28th November, 1801.

<sup>273</sup> Richardson, *Local Historian's Table Book*, p. 16.

<sup>274</sup> *An account of the Character and Conduct, Trial and Execution of Martin Bryan, who was executed on Thursday, September 1, 1808, at Morpeth, for barbarously cutting the throat of Barbara Weir, with an intent to murder her; and also robbing her of seven pounds and one shilling - on Shields Turnpike Road, on the 31st Dec last, (Marshall: Gateshead, n.d.)* JJC: Crime 1 (33).



called Low Stanners, at the foot of the town.<sup>275</sup> Whilst the method of execution remained the same, Boyd was drawn off the back of a cart, these executions marked a dramatic change from the previous site of execution. John Woods' map of Morpeth from 1826, shows the Low Stanners as a large expanse of open ground to the east of the town, skirted by the River Wansbeck.<sup>276</sup> From Morpeth Gaol, situated on Bridge Street, to the eastern most point of Low Stanners, before the rivers' edge is less than half a mile in distance. In many ways this move may have mitigated many of the fears apparent with the older form of out of town punishment, chiefly the chance of recovery of the prisoner; a factor, as will be shown later, that was a key in delays in Newcastle's transition. This move to a location so central and close to the town gaol happened over a decade before Durham's.<sup>277</sup>

A ten-year gap followed Boyd's execution, and, in that time, the first prison sited execution had taken place at Durham. The next test for the Northumberland authorities came in 1819 and the condemned man was Joseph Charlton, charged with an 'unnatural crime.'<sup>278</sup> One broadside stated that the offence itself, expiated 'at great length' by the Judge was of such 'extreme indelicacy' as to 'prevent any detail' being retold.<sup>279</sup> The exclusion of the details of the crime from a broadside, the regularly most salacious of the multifarious execution ephemera, is testament to the public horror at such a crime. Charlton was no doubt acutely aware of this public opprobrium, one newspaper reporting that he 'was keenly affected' by the idea of his execution being public and expressed a desire to have the gallows built 'behind the prison walls.' The authorities could not meet his request but allowed him a 'post chaise' to convey him to the execution site. The location is extant from many reports

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<sup>275</sup> *An Account of the Trial and Execution of John Boyd* (Marshall: Gateshead, n.d.) JJC: Crime 1 (26). This broadside is testament to the strength of opinion against forgery, opening with the following sentence 'In the list of public wrongs none are of a more pernicious tendency...than that for which unhappy man suffered death.' The high propensity of forgery cases to be capitally punished has been noted by McGowen. R. McGowen, 'From Pillory to Gallows: The Punishment of Forgery in the Age of the Financial Revolution', *Past and Present*, 165, (1999), pp. 107-140; R. McGowen, 'Managing the Gallows: The Bank of England and the Death Penalty, 1797-1821', *Law and History Review*, 25, (2007), pp. 241-282.

<sup>276</sup> Part of Woods' map appears in illustration 15, however, the map in its entirety can be accessed here <https://communities.northumberland.gov.uk/008528FS.htm>. This appears to be one of Woods' many maps of Britain, previously only understood as a predominantly Scottish Cartographer, B. Robson, John Wood 1: The Undervalued Cartographer.

*The Cartographic Journal*, 51 (3), 2014, pp. 257-273.

<sup>277</sup> *An Account of the Crime, Trial and Execution of John Boyd*

<sup>278</sup> *Westmorland Gazette*, 10<sup>th</sup> April, 1819.

<sup>279</sup> *The Last Dying Words of Joseph Charlton* (Pollard: Alnwick, n.d.), JJC: Crime 1 (40).

but it appears in one newspaper as 'on the Green at the outskirts of town.'<sup>280</sup> The ambiguity here over the exact location may be explanatory of earlier misrepresentations of Northumberland's continuation of executions at Fairmoor. This confusion is further abetted by conflicting contemporaneous reports at the next execution in the region.

At the double execution of Highwaymen John Wilkinson and William Surtees Hetherington on Monday 10<sup>th</sup> September 1821, numerous broadsides survive but, more importantly, differ in their reporting of the location. One has the scaffold at the 'Usual place of execution upon the Moor, about a mile from the Town.'<sup>281</sup> Whilst another noted that the pair travelled in a 'post chaise' from the gaol and 'arrived at the fatal spot, at the foot of the town.'<sup>282</sup> Given the earlier established move to the area of Low Stanners, it would seem most unlikely that authorities chose to then return later executions back to an out-of-town location. Whilst the nature of the crime, a long established bane of the Northumberland authorities, may have required exemplary punishment, it would seem illogical to have returned to an area that lacked the control of a more central site. The unlikelihood of such a decision is further evidenced by the sympathies expressed to the condemned by the crowd, reports from the execution noting many who 'sympathized in the fate of the unfortunate and miserable objects.'<sup>283</sup> It seems very unlikely that the authorities would have risked their transport any further than necessary for fear of attempts at recovery. This assertion is further supported when one looks at the execution that followed Wilkinson and Hetherington's, that of Mark Lawson and William Currie in 1822. The details are remarkably similar, both were double executions and for the crime of highway robbery. As previously, the execution took place at the 'foot of the

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<sup>280</sup> *Durham County Advertiser*, 17<sup>th</sup> April, 1819. The practice of allowing the condemned a post-chaise was common in Morpeth, Bryan (1808) and Boyd (1809) both being afforded a carriage.

<sup>281</sup> *An Account of the Execution of John Wilkinson and William Surtees Hetherington* (Summers: Sunderland. n.d) JJC: Murder and Executions, 9 (9)

<sup>282</sup> *An Account of the Trial, Crimes, and Execution of John Wilkinson and William Surtees Hetherington* (Newcastle: Marshall) Bodleian Library, University of Oxford: John Johnson Collection: Crime 2 (103)

<sup>283</sup> *Last Dying Speech & Confession of John Wilkinson and W. Surtess Hetherington* (North Shields: J. K. Pollock, n.d.), JJC: Murder and Executions, 9 (11). The execution broadside noted that the hanging took place at midday and in front of a large concourse of spectators, the duo were 'launched on that bourn from whence no traveller returns.'

town...near the waterside.'<sup>284</sup> More detailed reports of the location noted that it took place 'on the sands, immediately in front of the gaol quay...near the water side.'<sup>285</sup> The 'gaol quay' is not marked on Woods' map of 1826, but would appear to be the water's edge immediately behind the old gaol on Bridge Street. This assertion is supported by a particularly detailed broadside that gives a more exact location for the site.

As early as 5 o'clock on Wednesday morning, preparations were making for the final execution of their sentence, by erecting a Drop at the back part of the gaol, by the side of which is called the Gaol Quay, facing the river.<sup>286</sup>

It is possible that the changes of execution location deliberately coincided with the construction of a New Gaol. Originally proposed at a cost of £80,000, and paid for by a 'County Rate...similar to that for the Moot Hall, at Newcastle,'<sup>287</sup> the construction of the new gaol commenced in 1822, the same year as Currie and Lawson's hanging and the Act for its construction passed the year before, based on the plans of famous Newcastle architect John Dobson.<sup>288</sup> Reports of the time noted that 'when finished, this will certainly be one of the most secure, healthy, and convenient gaols in the Kingdom.'<sup>289</sup> Reports on the initial gaol works show that the immediate grounds around the river were problematic to say the least. Builders digging the foundation trenches in June 1822 found 'well-preserved waterlogged deposits...in deep foundation trenches cut for the construction of the gaol',<sup>290</sup> their dig producing a

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<sup>284</sup> *An Account of the Trial and Execution of Mark Lawson and WM. Curry* (Sunderland: Summers, n.d.). JJC: Murder and Executions, 6 (39)

<sup>285</sup> *An Account of the Crime, Trial, and Execution of Lawson and Currie, who were Hanged at Morpeth, on Wednesday, 20th March, 1822, for a Highway Robbery on the Morpeth Turnpike.* (Newcastle: Marshall, 1822) JJC: Crime, 1 (110).

<sup>286</sup> *Trial & Execution of William Currie, and Mark Lawson*, (Pollock: North Shields). JJC: Murder and Executions, 6 (40).

<sup>287</sup> William Parson and William White, *History, Directory, and Gazetteer*, p. 451.

<sup>288</sup> J. Hodgson, *A History of Northumberland, in Three Parts: Parts 2 and 3, Volume 2* (Newcastle upon Tyne: Charles Henry Cook, 1832) p. 437. Accessed January 14, 2018

<https://books.google.co.uk/books?id=lluAejPVbEwC&>

<sup>289</sup> Parson & White, *History, Directory, and Gazetteer*, p.451. Recent histories of John Dobson have noted the influences at work on his design for the New Northumberland Gaol at Morpeth. Amongst these were Conway, Beaumaris and Caernarvon Castles and the 'Maison De Force' near Ghent, Belgium. T. Faulkner & A. Greg, *John Dobson: Architect of the North East* (Newcastle: Tyne Bridge Publishing, 2001), pp. 41-42.

<sup>290</sup> *Morpeth: Northumberland Extensive Urban Survey Project.* (2009). Accessed February 11<sup>th</sup>, 2018 <https://www.northumberland.gov.uk/NorthumberlandCountyCouncil/media/Planning-and-Building/Conservation/Archaeology/Morpeth.pdf>

bizarre haul, including a 'thirty-eight foot oak tree, 13 feet below the surface and the skeleton of a Deer's Head.'<sup>291</sup> If this change of location was a statement of intent by the authorities, it was a decidedly dangerous one, as a large crowd and unstable ground would make for a potentially hazardous execution, especially as the send-off was set for Wednesday, 'market day', in Morpeth. As it was, the execution passed off largely without incident despite the crowd being 'so immense' that one broadside noted being unable to 'hear everything' said by the two condemned men.<sup>292</sup> One surviving broadside gives an insight into how potential disaster was avoided, 'near the gallows there was not much room for spectators, but from the opposite bank and the bridge the numerous populace had a distinct view of the whole scene.'<sup>293</sup> Woods' map of 1826 concurs with the assertions in this broadside and any visitor to modern day Morpeth, would see that the southern bank of the river and the Chantry Footbridge would have accommodated a large number of people and provided a very open vista, whilst the river provided a convenient break between the bulk of spectators and the condemned.<sup>294</sup> Interestingly, despite this notable change in the presentation of punishment, key elements of the older execution spectacle were retained, including the prisoners being preceded to their death 'according to the custom of the place, by a choir of sacred psalmody' and their eventual send off from the back of a cart.<sup>295</sup>

By the time of the next execution in Morpeth, 1846, the new prison had long since been completed. Ralph Joicey, charged with the murder of his father and widely reported as Joicey 'The Parricide' was due to be executed on Tuesday 17<sup>th</sup> March. Unlike at Durham, the gallows itself were at one step further removed from the crowd, positioned as they were 'between the iron palisading and the porch of the prison' and 'stood immediately in front of the principal avenue leading across the prison yard to the governor's house.' The newspapers noted that, although not fully

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<sup>291</sup> Sykes, *Local records*, p. 149.

<sup>292</sup> *An Account of the Trial and Execution of Mark Lawson and WM. Curry* (Sunderland: Summers, n.d.). JJC: Murder and Executions, 6 (39).

<sup>293</sup> *Trial & Execution of William Currie, and Mark Lawson*, (North Shields: Pollock, n.d.), JJC: Murder and Executions, 6 (40).

<sup>294</sup> The modern incarnation, an iron footbridge created in 1869, replaced the double arched wooden bridge that is believed to date from the c13<sup>th</sup>, where it led to the Chantry. Accessed 14<sup>th</sup> March 2017, <https://www.bridgesonthetyne.co.uk/chantfb.html> <http://www.gatehouse-gazetteer.info/English%20sites/5088.html>

<sup>295</sup> *An Account of the Crime, Trial and Execution of Lawson and Curry who were hanged at Morpeth*

obscuring the operation from view, the iron palisading meant the crowd's sightlines were 'interrupted... by the light fret work of the iron gate, which forms the inner barrier of the gaol.'<sup>296</sup> A similar setup was applied the year after at the last public execution in the region, the double hanging of George Matthews and James Welch. The only notable difference, with Joicey's being the size of the scaffold itself, a point this chapter will go on to address. Their execution was set for Wednesday, March 17th, 1847, and commanded a large police presence with a special train being laid on for 'a body of police from Newcastle.'<sup>297</sup> This may also be testament to the Irish backgrounds of both criminals and the coincidence with their execution on St Patrick's Day. *The Times* reported that 'it was supposed some disturbance might be occasioned by the countrymen of the condemned.'<sup>298</sup> Also, Welch was reported in one paper as having threatened escape numerous times. During a walk in the Prison yard he was reported to have asked the height of the wall, when told it was 30 feet Welch replied. 'that's not very high for me to get over. If I had a pick axe, I could make my escape; or give me ten minutes start from the gaol gate, and you will never see my heels again.'<sup>299</sup>

Most papers estimated the crowds at between 2-3,000, made up predominantly of 'masons and labourers', some noting a high proportion of women, and in numerous instances they were reported as 'peaceable and orderly throughout.'<sup>300</sup> This is all the more remarkable given the nature of the execution. Numerous papers noted that, 'both struggled a good deal' and Matthews 'suffered much torture.'<sup>301</sup> Given the potentially febrile circumstances of the event and the grim spectacle detailed, it is remarkable the concurrence across the papers of the good behaviour of the attendant crowds. It would appear the incident occurred due to a miscalculation on behalf of John Murdoch, the executioner, brought down from Scotland. After initially reporting an uneventful send off, *The Times* ran a new report three days later stating that the ropes were too long and as a consequence the convicts feet rested upon the

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<sup>296</sup> *Newcastle Journal*, 21<sup>st</sup> March, 1846.

<sup>297</sup> *Newcastle Courant*, 19<sup>th</sup> March, 1847. *The Newcastle Guardian* detailed that the 'large party of the Newcastle Police Force' attended 'under the Superintendence of Mr Stephens. *Newcastle Guardian* March 20<sup>th</sup>, 1847

<sup>298</sup> *The Times*, March 18<sup>th</sup>, 1847.

<sup>299</sup> *Newcastle Courant*, 19<sup>th</sup> March 1847.

<sup>300</sup> *Newcastle Courant*, 19<sup>th</sup> March 1847.

<sup>301</sup> *Newcastle Guardian*, March 20<sup>th</sup>, 1847



‘fallen beam’ and thus prolonged their agonies requiring then to be hauled up and hanged again.<sup>302</sup>

These findings then stand in direct contradiction to previous assessments on Northumberland’s changing execution practice. Indeed, of the three regions sampled they were in fact the first to bring an execution into a central location, experimenting first to the immediate east of the town on the open fields of Low Stannars and later immediately behind the Old Gaol. Many of the features of older execution were retained at these executions with processions undertaken, even in the short distance between the old gaol and the river bank, and the use of a cart as gallows.

## Newcastle

I cannot conceive anything more horrible than taking a man from prison, parading him through the streets up to the Town Moor, and then hanging him like a dog (hear, hear). Moral Effect! Why more picking of pockets takes place at the foot of the gallows than anywhere else in ten times as many days or weeks in the year.<sup>303</sup>

So stated Alderman Donkin at a specially adjourned meeting of Newcastle Council on Oct 9<sup>th</sup>, 1844. The assembled had been drawn together to discuss the late execution of Mark Sherwood, an Artillery Pensioner, convicted of the murder of his wife, his execution having taken place in the August of that same year.<sup>304</sup> The debate was framed around a motion calling for the complete abolition of capital punishment, but at its essence was a reaction to a spectacle that many on the council deemed no longer suitable for public consumption. Sherwood’s was to be the final execution on open land in the North East and, although attended by tens of thousands of people, it occasioned deep shame amongst many of the councilmen in attendance at that October meeting. Their debate therefore acts as a perfect microcosm for an era in which such a brutal public punishment was becoming

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<sup>302</sup> *The Times*, March 20<sup>th</sup>, 1847. In attempting to detail the scene the newspaper stated ‘the effect of this inhuman scene upon the crowd....cannot be described.’ Notably, *The Times*’ original report of the 18<sup>th</sup> March reported no such occurrence.

<sup>303</sup> Mr. Alderman Donkin speaking at a meeting of the Town Council on October 9<sup>th</sup>, 1844. *Proceedings of the Town Council of the Borough of Newcastle for 1844* (Newcastle: John & James Selkirk, MDCCCXLIV), p. 216.

<sup>304</sup> Mark Sherwood was executed on the 23<sup>rd</sup> August 1844.

increasingly at odds with the society for whom it was intended, yet where no tangible alternative could be unanimously agreed upon.<sup>305</sup>

A month after John Greig became the first felon to be hanged on the 'new drop' outside Durham's County Courts, James O'Neil was processed through the centre of Newcastle on the back of a cart, streets lined with thousands of people, to meet his eventual end on the Town Moor; 'a scene largely unchanged in centuries.'<sup>306</sup> Indeed, an execution similar to Greig's would not take place until 1850 in Newcastle. In part, this was owing to the lack of a suitable prison for the administering of such execution in Newcastle. The planned construction of a new gaol at Newcastle was debated for many years.<sup>307</sup> Writing in October 1820, the *Tyne Mercury* noted the lengthy and protracted nature of discussions 'about seven years ago, the erection of a new gaol in this town was first proposed; the project was then, as it has been when revived at intervals since...abandoned, on the ground of the immense expense which would become chargeable to the different parishes.'<sup>308</sup> Alongside the cost, the location of the gaol was the subject of heated debate. The initial 'feeling of many' was to locate the new gaol as close to the newly built Moot Hall law courts as possible.<sup>309</sup> However, after protracted discussions, the eventual site chosen was a large open piece of land known as Carliol Croft. By the turn of the nineteenth-century, the Croft was the largest open space within the town walls. The location of the Croft was a controversial one and the concerns around it pay tribute to an underlying fear of the crowd. A letter appeared in the *Newcastle Courant* in 1822, signed by 'an inhabitant' dismissing sites like Carliol Croft as being too far away. It argued that the new gaol

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<sup>305</sup> Alderman Headlam opened the debate stating that capital punishment was 'totally unfitted to the state of moral feeling in a civilized nation' and as such he stated 'I trust I shall have the support of the members in this council' he was wrong in this assertion. The first serious response was in the negative, more importantly it was from Newcastle's Sheriff, Mr W. Cookson, who stated 'I think the Legislature would be scarcely justified in abolishing this mode of punishment in cases of murder.' He went on to argue 'Nothing is so great a preventative of crime as the certainty of the punishment that awaits it...it is the uncertainty of the law of that is the cause of so much hope for the criminal to rely upon.' *Proceedings of the Town Council of the Borough of Newcastle, 1844*, pp. 212-214.

<sup>306</sup> *A true and particular account of the trial and execution of James O'Neil &c* (Marshall, Newcastle, 1816). JJC: Crime, 2 (29).

<sup>307</sup> Plans for a new gaol appear in the Quarter Sessions Order Books, at the Midsummer Sessions, 1809. NRO QSO 16.

<sup>308</sup> 'The New Gaol', *Tyne Mercury*, 3rd October 1820.

<sup>309</sup> In her work on Carliol Square gaol, Mollon noted that 'matters were further complicated by the fact that Northumberland's quarter sessions were also held in Newcastle, also in the Moot Hall and frequently on the same day. This meant that some provision had to be made for prisoners from both counties.' P. M. Mollon, *Newcastle upon Tyne and its new gaol 1823-1878: A Case Study*, Master's Thesis, University of Sunderland, 1992, p. 34.

should be as close to where the prisoners were held as possible, for fear that the public would try and rescue a criminal from the gallows. Warning the reader that the days of radicalism with 'marshalled mobs in their thousands' were ever present and therefore, 'the public mind need only be possessed with a wrong and mischievous impulse, to rescue, in spite of all opposition, a favourite leader.'<sup>310</sup>

Commencing construction in 1823, the new gaol was the work of Newcastle's most prolific architect, John Dobson, and took six years and cost £48,542 6s.<sup>311</sup> However, the original plans show no specific forethought for execution. It would appear that in their plans for the gaol the authorities never made proper provision for its undertaking, perhaps in large part owing to the limited incidence of capital punishment not making it a pressing concern. This became apparent the year following the prison's completion when Jane Jamieson was sentenced to death, followed by dissection, for the murder of her mother. Despite both the new building being completed and Morpeth's recent additions to execution practice, Jamieson was hanged at the usual spot on the Town Moor, a spectacle which had all the hallmarks of a fully public execution. Indeed, reports noted that whilst she was resigned to her death and that she 'lamented that she was to be hanged like a dog.'<sup>312</sup>

On the morning of Saturday 7th March, 1829, Jamieson was processed on an open cart through the principal streets of the town, a procession that covered roughly one mile and took just under an hour. She sat atop her coffin on a cart and was 'dressed in a black gown and black hat, with a green shawl over her shoulders which was laid aside at the place of execution.' Numerous reports noted that the procession was

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<sup>310</sup> An Inhabitant, 'To the Editor of the Newcastle Courant', *Newcastle Courant*, 22<sup>nd</sup> June, 1822. Whilst the political agitations of the people of the North East may play second fiddle in the histories to that of Manchester or the Cato Street Conspirators of London, the area was no less radical than its better known counterparts. For a detailed assessment of Newcastle's radicalism in the period see P. Cadogan, *Early Radical Newcastle*, (London: Sagittarius Press Limited, 1975). For a broader history online see Mapping Radical Tyneside, [www.radicaltyneside.org](http://www.radicaltyneside.org).

<sup>311</sup> Mollon in her work on Newcastle Gaol noted how later reports incorrectly noted the cost at £35,000, describing why she suggested 'that the true cost was closer to £48,542' however 'it would seem the Corporation was not anxious to reveal the true costs incurred' which included, amongst other things, 'legal expenses, salaries of the architect and monies borrowed.' Mollon, *New Gaol*, p. 49.

<sup>312</sup> 'Execution of Jane Jameson', *Newcastle Courant*, 14<sup>th</sup> March, 1829.

‘accompanied by vast crowds of people all the way to the Town Moor.’<sup>313</sup> Testament to the size of the crowd can be seen in a surviving diary entry by apprentice surgeon, Thomas Giordani Wright, who noted that the procession ‘passed...within sight of my window’, a central apartment, but he chose not to partake with ‘the assembled thousands who crowded to the last scene of her existence.’<sup>314</sup> Instead coldly noting that, he would ‘most likely partake of the benefits accruing therefrom’ at her dissection.<sup>315</sup>

Newcastle was not to see another execution for 15 years following Jane Jameson’s, that of Artillery Pensioner Mark Sherwood, in 1844. Sherwood, sentenced to death for murder, was incarcerated at Carlol Square Prison and as such the authorities had an opportunity to bring the execution into the centre of the town and conform to the standards that had been almost universally adopted across England and Wales, including in Durham. Initially, this appeared to be the case one local broadside reporting that ‘It was originally intended of the magistrates that Sherwood should suffer at the foot of Carlol Street.’<sup>316</sup> However, the authorities were to go through several iterations and ultimately end up siting it on the Town Moor, at the previously unused location of the race-course.

Although the site of previous executions for hundreds of years, the Town Moor in the interim years between Jane Jamieson’s execution in 1829 and Mark Sherwood’s sentencing, had become a central rallying point and hotbed for some of the most radical political agitation and activism in the region. The Moor had historically been a meeting place for myriad different causes and was often the scene of ‘major political and trade union meetings’, most notable of which were the 80,000 who gathered on 11<sup>th</sup> October in 1819 to protest against the Peterloo Massacre. However, in the 1830s the Chartist movement had proved particularly strong in Newcastle, with fears of armed insurrection and meetings of some 70,000 Chartists on the Moor,

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<sup>313</sup> *An account of the trial and execution of Jane Jameson &c* (Newcastle: Marshall, 1829) JJC: Harding B 9/2 (74).

<sup>314</sup> Johnson, *The Diary of Thomas Giordani Wright*, p.293.

<sup>315</sup> *Ibid.*,

<sup>316</sup> *Execution of Mark Sherwood, which took place this day. August 23<sup>rd</sup> 1844, on the Town Moor for the murder of his wife*. JJC: Murder and Executions, 8 (11).

addressed by Feargus O'Connor in the July of 1838.<sup>317</sup> There was a different protest afoot though in 1844; a movement of the miners. On 5<sup>th</sup> April a total 33,990, men refused to renew the bond unless 'harsh penal conditions were relaxed, and an advance of wages was conceded.' The movement sparked a series of huge public meetings and rallies across the North East including an estimated 40,000 at Shadon's Hill.<sup>318</sup> Although the strike movement waned under pressure from the press and authorities, in the months run up to Mark Sherwood's execution, the Moor played host to two major miners' rallies in support of the great strike.<sup>319</sup> The latter of the two rallies, on the 30<sup>th</sup> July 1844, was one of the greatest attended in the region with an estimated 30,000 people. Reports of the time noted that the whole of those assembled took over 70 minutes to process past the Theatre Royal in the town centre.<sup>320</sup>

The Town Moor's febrile political associations combined with rising miners' agitation would have meant that a decision to locate an execution there was by no means the easy option. Added to which the miners, as will be shown in chapter five, had a fractious history with the local magistracy, epitomized in the fact that the final executed man to suffer the post-mortem punishment of gibbeting in the region was one of their own, executed for his role in the murder of magistrate Nicholas Fairles.<sup>321</sup> The Order Books make no reference to the decision over location at Sherwood's execution, but the newspapers made it apparent that the decision had not been a simple one.<sup>322</sup> Reporting on the 17<sup>th</sup> August, *The Newcastle Journal* stated that,

The Sheriff of the Town was in consultation with the Magistrates, at the Police Station, in the Manors, yesterday, when it appeared that the general opinion

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<sup>317</sup> J. Hardwick, *Chartist meeting, Town Moor, Newcastle*, 27<sup>th</sup> June, 1838. Accessed 30th August 2018 <http://radicaltyneside.org/events/chartist-meeting-town-moor-newcastle>.

<sup>318</sup> S. Webb, *The Story of the Durham Miners (1662-1921)*, (London: Fabian Society, 1921), p. 43

<sup>319</sup> *The Tyne Mercury* cited in K. Smith & T. Yellowley, *The Town Moor: Newcastle's Green Heart* (Newcastle Upon Tyne: Tyne Bridge Publishing, 2014), pp. 77–78.

<sup>320</sup> As with all figures the estimates vary wildly and the *Newcastle Courant* gave a detailed assessment judging on the numbers processing that passed their reporter by leading them to estimate 'in round numbers' at only 8,000 people. This however did not account for the eventual numbers gathered in the Moor itself. *Newcastle Courant*, August 2<sup>nd</sup>, 1844.

<sup>321</sup> Further testament to the strength of feeling in the community can be seen, as evidenced in chapter five, by the successful attempts to recover the body of miner William Jobling from his gibbet on Jarrow Slake.

<sup>322</sup> TWAM MG.NC/6/1 Quarterly and Special Sessions Minutes and Orders, 1<sup>st</sup> October 1837 – 26<sup>th</sup> September, 1848. .

expressed was, that the Town Moor was the most fitting place for the execution.

The paper made it clear that 'sole authority and responsibility' lay with the Sheriff himself, however his decision to consult with both the Police and Magistrates is testament to the difficulty of the task faced.<sup>323</sup> Ironically though, it was not the threat of political violence and public unrest that led to the final decision on where to site Mark Sherwood's execution. Instead it was an execution some 165 miles south of Newcastle that was to play an instrumental role in delaying and ultimately relocating executions in that town.

In the May of 1844, a Nottinghamshire man, William Saville, brutally murdered his wife and three children at Colwick Spinney and the case achieved widespread notoriety, piquing interest far further afield than Nottingham.<sup>324</sup> Not least because, in the months leading up to the execution the site of the murder itself was descended upon by multitudes of people with reports claiming that 'grass, soil and twigs,' had been lifted from the site as souvenirs. Saville's execution took place on the 7<sup>th</sup> August 1844 and some estimates held the crowd to be as large as 50,000.<sup>325</sup> One newspaper stated, 'we believe no circumstance of the same nature ever created so much excitement in this neighbourhood, as the recent tragedy at Colwick. This need be no matter of surprise, for certainly we never recollect a crime of equal enormity.'<sup>326</sup> The street in front of the County Hall, where the execution itself took place, was roughly 30 yards wide with buildings either side, creating a long funnel effect for the crowd.<sup>327</sup> The streets were fit to bursting with one report stating 'countless thousands were packed together. As far as the eye could reach from the scaffold, in front of the County Hall, nothing could be beheld but a sea of heads.' Order was largely maintained during the execution, but it was immediately after the drop descended that the chaos ensued. A break in the crowd to 'witness the

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<sup>323</sup> *Newcastle Journal*, 17<sup>th</sup> August, 1844.

<sup>324</sup> F. E. Earp, 'William Saville: Murder in a Colwick Spinney', Nottingham Hidden History Team, Accessed January 21<sup>st</sup>, 2017 <https://nottinghamhiddenhistoryteam.wordpress.com/2014/03/13/william-saville-murder-in-a-colwick-spinney/>.

<sup>325</sup> J. Rowbotham, 'A 'dreadful occurrence' in Nottingham', *Nottingham Post* 16<sup>th</sup> August, 2014. Accessed January 28<sup>th</sup>, 2017 <http://www.nottinghampost.com/Judith-Rowbotham-dreadful-occurrence-Nottingham/story-22755375-detail/story.html>.

<sup>326</sup> *Nottingham Review and General Advertiser for the Midland Counties*, 7<sup>th</sup> June, 1844

<sup>327</sup> The site is now the National Justice Museum (<http://www.nationaljusticemuseum.org.uk/>)

spectacle' was matched by a 'general and still deeper desire to get away from the overpowering and suffocating pressure and the maelstrom that ensued left numerous people crushed against the walls and with no escape as the surrounding house doors were all closed.<sup>328</sup> The resultant crush left twelve people dead and hundreds injured in the ensuing melee.<sup>329</sup>

The catastrophe at Nottingham occasioned widespread outrage and its effects were felt nationally. Salford MP, Joseph Brotherton, raised the incident in Parliament on Thursday 8<sup>th</sup> August, 1844, seeking to know if, in light of the tragedy, the Government would contemplate 'any further measures tending towards the abolition of Capital Punishment.'<sup>330</sup> Its effect was felt most keenly though in Newcastle. The location and style of Mark Sherwood's grim demise would be determined by this disaster and the decision made whilst he resided in Carlol Square gaol, awaiting his execution scheduled for Friday 23<sup>rd</sup> August. The authorities in Newcastle had originally pronounced that Sherwood would be hanged within the vicinity of Carlol Square gaol, situated perpendicular to the principal streets of Newcastle's city centre. However, the news from Nottingham caused a dramatic about turn as reported in the *Newcastle Courant*,

The sad occurrence which was lately witnessed at Nottingham, where sixteen persons were crushed to death, when a man was executed for murder, has caused the idea to be given up of carrying the sentence of the law into effect upon Sherwood in the immediate vicinity in the gaol, as it is feared some serious accident might happen (as at Nottingham) from the want of space to hold the vast multitudes who usually attend such occasions. It is likely, therefore, that the execution will take place on the 23<sup>rd</sup> instant, on the Town Moor, a little beyond the Barracks, which is the spot where criminals have been put to death for six hundred years.<sup>331</sup>

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<sup>328</sup> J. F. Sutton's *Date Book* cited in *The History of Colwick Woods* Accessed 19 February 2018 <http://www.friendsofcolwickwoods.co.uk/history.html>

<sup>329</sup> *The Illustrated London News* carried an image of the ensuing melee, *Illustrated London News*, 10<sup>th</sup> August, 1844. The image is available online at <https://www.alamy.com/stock-photo-crush-of-spectators-at-the-execution-of-william-saville-7th-augu-92755455.html>. Accessed 17<sup>th</sup> December, 2018.

<sup>330</sup> *Newcastle Journal*, 10<sup>th</sup> August, 1844.

<sup>331</sup> *Newcastle Courant*, 16<sup>th</sup> August, 1844.

In the above report the *Courant* believed that Sherwood would instead be executed at the site commonly used for Newcastle's executions, 'a little above the barracks'<sup>332</sup> as was the case with Jane Jamieson in 1829. However, this was not to be the case. Sherwood was indeed hanged on the Town Moor, but his execution took place at the far grander location of the Newcastle Race Course. About a mile east of the traditional execution spot, the Race Course was a triangular enclosure, complete with a grandstand and home to many race days. The Town Moor itself had been the site of horse racing since as early as 1721, the first official recorded races in Newcastle being in 1632 on Killingworth Moor.<sup>333</sup> The Town Moor course soon became more popular than Killingworth Moor owing in part to its prime location besides the North Turnpike Road. Testament to the area's popularity can be seen in Eneas McKenzie's *History of Newcastle*, where he cites the Turf Hotel, marked just North of the Grandstand on an 1858 Map,<sup>334</sup> as 'one of the largest and best hotels of the kind in any provincial town of the kingdom' and 'chiefly used for the accommodation of travellers.'<sup>335</sup>

The race course itself was 'largely unenclosed, allowing free access to races for the general public.'<sup>336</sup> However, in 1800 a grandstand was built, via share subscription, in line with the finishing posts, to accommodate wealthier patrons and to facilitate better views along the course.<sup>337</sup> The course itself can be seen on Armstrong's Map of eighteenth century Northumberland, see illustration 1. The scaffold was erected within the circle of the race course on 'an extensive plane, from every part of which a

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<sup>332</sup> *An Account of the Trial and Execution of Jane Jameson, who was Hanged on Newcastle Town Moor, March 7th, 1829, for the Murder of her Mother* (Newcastle: Marshall, c.1829) JJC: Harding B 9/2 (74)

<sup>333</sup> Smith & Yellowley, *The Town Moor*, p. 79.

<sup>334</sup> This map shows the grandstand in relation to the race course, only half of which is on the map itself. *Northumberland LXXXVIII (includes: East Brunton; Gosforth; Newcastle upon Tyne; North Gosforth; West Brunton.)* (Map). 1858. Scale 1:10,560. National Library of Scotland <http://maps.nls.uk/view/102346461>. The layout of the Town Moor is remarkably unchanged today as a comparison between a Modern-Day aerial view and the 1858 map shows. Furthermore, the Blue House marked on the original 1858 map is still in existence. Originally one of two blue houses built to house the workers and their families, that maintained the Moor, the other has since been demolished. 'Newcastle, Town Moor, Blue Houses | Sitelines.newcastle.gov.uk,' accessed 6 June, 2016, <http://www.twsitelines.info/SMR/5897>

<sup>335</sup> E. Mackenzie, *A Descriptive and Historical Account of the Town & County of Newcastle-upon-Tyne, Including the Borough of Gateshead* (Gateshead: Mackenzie & Dent, 1827) p. 718. Accessed 9<sup>th</sup> June 2017 [https://books.google.co.uk/books?id=CPsVAAAAYAAJ&source=gbs\\_navlinks\\_s](https://books.google.co.uk/books?id=CPsVAAAAYAAJ&source=gbs_navlinks_s)

<sup>336</sup> 'Tyne and Wear HER(4246): Gosforth, High Gosforth Park Racecourse,' accessed 11 February, 2017 <http://www.twsitelines.info/SMR/4246>.

<sup>337</sup> Smith and Yellowley, *The Town Moor*, p. 80.



distinct view of the mournful operations could be obtained.’ It is unclear from the sources exactly where people were positioned, as there is slight discrepancy in the accounts available. The *Newcastle Journal* reported that the gallows themselves were ‘surrounded by a staked octagon, about seventy yards (sic) between its opposite sides’ within which ‘none but the representatives of the press and official personages were admitted’<sup>338</sup> However, in the diary of local railwayman, Richard Lowry, a frequent execution attendee, he states that he ‘took up my stand about 20 yards from the Gallows.’<sup>339</sup> Minor discrepancies aside, Lowry makes it clear that from his position he could see the condemned man clearly, passing comment on Sherwood’s countenance at various stages.

### **Another brick in the wall; Prison sited send-offs**

Mark Sherwood’s execution was to be the last execution on the Town Moor in Newcastle, but the same fears that had dogged and ultimately changed its location didn’t go away. Indeed, the spectre of the Colwick Spinney murderer’s execution and ensuing catastrophe still loomed large in the minds of the Newcastle authorities at the next execution; that of Dublin native, Patrick Forbes in 1850.<sup>340</sup> Charged with the murder of his wife, having run her through with a poker, Forbes was unlikely to have any success with an appeal. *The Times* reported that ‘there is no sympathy expressed for the man in Newcastle’ owing, in large part, to his ‘profligate life.’<sup>341</sup> His execution was set for the 24<sup>th</sup> August, but the location was still very much undecided, in large part owing to the spectre of Nottingham.

As Patrick Forbes awaited his grim fate in Newcastle’s Carlisle Street Prison, the final decision on the location of his execution was being discussed by numerous parties. The decision ultimately lay with the Sheriff of Newcastle, at the time Mark Lambert Jobling, however it was clear that he was consulting others. Newspaper reports make clear that the Town Surveyor, Mr Wallace, was likely to be one of those

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<sup>338</sup> *Newcastle Journal*, 24 August, 1844.

<sup>339</sup> 23<sup>rd</sup> August, 1844, *Diaries of Richard Lowry*, TWAM, DF.LOW 1/3

<sup>340</sup> ‘The Execution of Forbes,’ *The Tablet*, 31<sup>st</sup> August, 1850. For a detailed examination of the Forbes case see H. Rutherford, ‘Unity or Disunity? The Trials of a Jury R v John William Anderson: Newcastle Winter Assizes 1875’ in *Union and Disunion* (forthcoming). I would like to thank Helen for giving me an early draft of the paper.

<sup>341</sup> *The Times*, 24<sup>th</sup> August, 1850.

concerned. Wallace himself was responsible for the building of the scaffold used at Mark Sherwood's Town Moor execution in 1844 and Ralph Joicey's execution in Morpeth in 1846.<sup>342</sup> He had also been responsible for the 'arrangements' for the execution of Ralph Joicey at Morpeth.<sup>343</sup> Reporting on the authorities' dilemma, the *Newcastle Journal* made it clear that fear of a repeat of Nottingham was at the forefront of the discussion.

'Enquiry has been made into the circumstances under which the destruction of life took place at Nottingham, and from a survey and comparison of Carlol square with the space in front of the prison at Nottingham and a consideration of all the circumstances, there seemed no reason to apprehend such a catastrophe in Newcastle from the locality selected.'<sup>344</sup>

The Minutes of the Quarter Sessions on 8<sup>th</sup> August 1850 show that a meeting was called specifically to select 'the most convenient place for the execution', the final resolution being that it should take place 'at the north side of the gaol opposite the foot of Carlol Street on Saturday the twenty fourth day of August instant at eight o'clock in the morning.'<sup>345</sup> One newspaper noted the 'considerable diversity of opinion' on the most suitable place for the execution, but ultimately the Sheriff chose it to happen against the north wall of the prison. The decision was an interesting one, as the streets to the north side of Carlol Street Gaol were considerably smaller than those in front of the gaol's west facing entrance. Testament to this can be seen in the *Newcastle Journal*, who expressed fears that the 'narrow and confined locality' would require 'unusual care and vigilance...to prevent the recurrence of accidents similar to what happened at Nottingham some time since.'<sup>346</sup> As such, serious precautions were undertaken, seven barriers were erected in all 'at various intervals around the scaffold' and blocking some adjoining streets in 'order to contain the crowds.'<sup>347</sup>

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<sup>342</sup> *Newcastle Journal*, 21<sup>st</sup> March, 1846.

<sup>343</sup> *Newcastle Journal*, 31<sup>st</sup> August, 1850.

<sup>344</sup> *Newcastle Journal*, 24<sup>th</sup> August, 1850.

<sup>345</sup> *Newcastle Magistrates Court Quarterly and Special sessions minutes and orders. Borough of Newcastle*, MG/NC/6/2 (TWAM), p.166.

<sup>346</sup> *Newcastle Journal*, 31<sup>st</sup> August, 1850.

<sup>347</sup> *Newcastle Courant*, 30<sup>th</sup> August, 1850.

Newcastle was to wait thirteen years before it had another execution to administer and it was also to be its last before the advent of private execution. The condemned man was George Vass, charged with the rape and murder of Margaret Doherty. The brutality of Vass's crime shocked the public and all of the relevant authority figures who became involved; the Surgeon, Dr Rayne, stating that he had 'never seen a body so mangled before, except by a machine.'<sup>348</sup> Testament to the widespread horror of the crime can be seen in Judge Baron Martin's statement following Vass's sentencing that he had 'not the slightest chance of having mercy extended to him.'<sup>349</sup> Whilst the surety of the sentence was assured, the location of the execution was not as clear cut.

In the years following Patrick Forbes's execution in 1850, Carloli Street Gaol had undergone several important changes. Indeed, the prison at the time of Forbes' execution had been the subject of a detailed debate on the Newcastle Town Council. Reading from the 15<sup>th</sup> report by the Inspector of Prisons, Mr Blackwell noted that 'instead of being a place of reformation, it serves...as a school of corruption.'<sup>350</sup> Blackwell went on to state that serious reports of insubordination in which the lives of officers were endangered and 'the magistrates and the police force' were 'set at defiance for about two days' had taken place just months before.<sup>351</sup> He himself had visited Durham to see how other prisons coped and noted that although 'not so well adapted...for the purposes of prison discipline...its arrangements were incomparably better than those at the gaol at Newcastle.'<sup>352</sup>

One of the key alterations undertaken between 1850 and 1863 was the relocation of the female wing. The wing had been moved nearer to Carloli Street, abutting the West Wall of the prison and the site of the scaffold at Patrick Forbes' hanging. As a result of this move, the Prison Governor, Mr Robins, deemed it an unsuitable location for Vass' hanging as he feared the 'effect which the tragedy might have upon the minds of the female prisoners.'<sup>353</sup> As a result the scaffold was relocated to

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<sup>348</sup> *Bury Times*, 10<sup>th</sup> January, 1863.

<sup>349</sup> *Newcastle Journal*, 14<sup>th</sup> March, 1863.

<sup>350</sup> *Proceedings of the Town Council of the Borough of Newcastle for 1850* (Newcastle: John Selkirk, MDCCCL), p.120.

<sup>351</sup> *Proceedings of the Town Council* (1850) p.121

<sup>352</sup> *Proceedings of the Town Council* (1850) p.121

<sup>353</sup> *Newcastle Journal*, 16<sup>th</sup> March, 1863.

the south end of the gaol. Sensitivity towards women regarding executions spectacles was not uncommon, their presence was frequently noted with horror in execution reports. Despite this, women made up a large proportion of the crowd, often bringing their offspring with them. At the 1829 execution of Jane Jamieson, local papers reported that of the estimated 20,000 strong crowd on the Town Moor, over half were women.<sup>354</sup>

On the Tuesday prior to Vass' execution the local authorities had had the perfect dry run for managing an overcrowded city centre. In celebration of the Prince of Wales' wedding day, the streets of Newcastle were lined with elaborate illuminations viewed by tens of thousands of people in a display 'equal...to any town of its size.' Despite unfavourable conditions of 'frequent showers of snow and sleet' the *Newcastle Guardian and Tyne Mercury* described the unprecedented turnout.

'Newcastle was in the streets on Tuesday. The phrase comes from the French, but it is sufficiently Anglicised to warrant its use, and we know of none so expressive....It would be difficult to find a spectacle so grand and exhierating (sic), so significant and suggestive, as that which was witnessed here.'<sup>355</sup>

As part of the celebrations a huge display of lights, some gas powered, adorned the centre of Newcastle. All the principal streets of the town, shops and public buildings were resplendent with lighted illuminations. Notably the *Newcastle Journal*, printed an exhaustive and detailed list of every street and buildings illuminations, a list amongst which Carliol Square was not included. The street directly in front of the prison is marked as Manors in Reid's 1863 map of Newcastle and indeed, the road leading up to it, Manor Chare, was mentioned as taking part.<sup>356</sup> Its exclusion in the festivities is potentially important for two reasons. Firstly, it nods to the fact that it was an area not deemed suitable to host such festivities and secondly, it was perhaps not a street capable of accommodating a vast concourse of people. Indeed, even the old Gallowgate, so long a central part of processional road for Town Moor executions, was adorned with gas lit 'large and handsome transparencies...arranged

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<sup>354</sup> *London Standard*, 12<sup>th</sup> March, 1829.

<sup>355</sup> *Newcastle Guardian and Tyne Mercury*, 14<sup>th</sup> March, 1863.

<sup>356</sup> 'Plan to Reid's Handbook of Newcastle 1863' Scale: 40 chains to 0.5mile (1863) Accessed 16 June, 2018 <https://newcastlecollection.newcastle.gov.uk/maps/plan-reids-handbook-newcastle-1863>

in boxes, with borders of crimson to give effect.' A spectacle that could be seen from the 'Barrack Road,' site of the former gallows.

The town had pulled out all the stops for the celebration, the £200 initially voted by the corporation as sufficient to illuminate the 'public buildings of the town' and entertain the people 'with a display of fireworks' soon being found woefully wanting; the committee having to call upon the council 'to supply them with £300 *more*.'<sup>357</sup> There was a terrible irony in the date of these celebrations, happening as they did on the 10<sup>th</sup> March, as it was also the condemned man, George Vass', 20<sup>th</sup> birthday. From numerous reports we know that prisoners awaiting execution at Newcastle's Carlol Square Gaol often heard the gallows being constructed from their cell, so a town wide party must have been a cruel reminder of the life Vass had so brutally forfeited.

Four days later, on Saturday 14<sup>th</sup> March, the stage was set for Vass' execution. Vass was to be the final person publicly executed in Newcastle and the penultimate in the North East – Matthew Atkinson suffering that ignominious fate, two years later, at Durham. Sadly, despite the dry run of the Prince of Wales' illuminations, the worst fears occasioned by the Nottingham tragedy were partly realised. The crowd surrounding the prison was vast, one newspaper detailing its rapid growth in the hour before the execution,

'Denser and denser became the crowd, until at last the crush was perfectly terrific, far exceeding anything that was seen on Tuesday night last, when illuminations attracted so many thousands into our streets.'<sup>358</sup>

The enormous crowd in attendance were described in florid terms, their behaviour being widely reported as outrageous.

'The blackguardism of the town was indeed fully represented....those who saw it very generally expressed a strong opinion that the town would gain greatly were four-fifths of those gathered in front of the Gaol shipped off, *en masse*, to Botany Bay....The conduct of the crowd thus assembled was, in one respect, about as bad as it

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<sup>357</sup> *Newcastle Guardian and Tyne Mercury*, 14<sup>th</sup> March, 1863.

<sup>358</sup> *Newcastle Journal*, 16<sup>th</sup> March, 1863.

could be, and fully proved the folly of imagining the public executions have any salutary or restraining influences upon those who witness them.<sup>359</sup>

The fears that the narrowness of the street surrounding Carliol Square Gaol would lead to a crush were partly realised, one newspaper reporting that ‘Several persons were injured in the crowd.’ Luckily no-one was fatally injured. Details of the injuries in another paper listed the total number of serious casualties at four, amongst them three men and one woman.<sup>360</sup> The *Newcastle Daily Journal* reported that the two most seriously injured, John Ryan and Joseph Myers, were rushed to nearby Manors Police Station, where ‘restoratives were speedily applied, after which they regained consciousness.’<sup>361</sup> Despite all the myriad administrative changes and tweaks to the situating of the execution, Newcastle’s final public execution was arguably one of its worst.

### **The Engine of Death: The scaffold and the changing apparatus of execution**

What is this which yon workmen are raising,  
As in silence their labours they ply?  
‘Tis scaffold – the laws last avenger,  
For to-morrow the culprit must die. <sup>362</sup>

Alongside the changing locations of execution, in all cases of the regions sampled the apparatus of death underwent fundamental changes in this period and often in line with the relocation of the spectacle. The old practice of driving a prisoner off a cart or throwing them from a ladder that effectively elicited death by protracted strangulation was slowly removed and replaced by a ‘drop’ system. The horrors of the old methods of executions were often chief in the minds of officials and the condemned alike. Alderman Donkin’s feelings of repulsion at a man being hanged like a dog that opened this chapter were shared by many a condemned felon. In 1844 Mark Sherwood ‘desired the apparatus might be constructed with sufficient

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<sup>359</sup> *Newcastle Journal*, 16<sup>th</sup> March, 1863.

<sup>360</sup> *Newcastle Courant*, 20<sup>th</sup> March, 1863.

<sup>361</sup> ‘Amongst those more seriously maimed were Joseph Myers, Sheriff Hill; John Ryan (an old man, who was suffering from a prior accident), Hall’s Court, Silver Street; William Procktor, Ballast Hills; and Susan Donkin, Pitt Street. The injuries had resulted, in most cases, from being ‘trampled on or crushed against the walls.’ *Newcastle Daily Journal*, March 16<sup>th</sup>, 1863.

<sup>362</sup> John Barnes, ‘Poem by John Barnes’, *Newcastle Guardian & Tyne Mercury*, August 17<sup>th</sup>, 1850.

strength, so that no accident might occur to protract his bodily suffering.<sup>363</sup> In his case, he was to be the first in Newcastle to sample the new system, an unenviable prize.

The 'drop' technology had its origins in mid to late eighteenth-century London. The method involved the use of a longer length of rope and a set of, usually bolt released, trap doors on which the prisoner would be placed and ultimately fall through into a covered, 'box-like' structure removed from public view.<sup>364</sup> The theory behind the innovation was that the combination of the drop and the rope length was intended to cause a clean break of the neck and, with it, a more humane demise. However, numerous cases in the North East and elsewhere attest to its limited success.<sup>365</sup> Indeed, its earliest application was something of a false start, used as it was at the vastly attended execution of Earl Ferrers at Tyburn in 1760, the eighteenth-century's only execution of a peer for a criminal act.<sup>366</sup> At Ferrers' execution a 'drop' scaffold was used, however the drop was only a few inches and having not accounted for the effect of the condemned man's weight on the rope, the resultant stretching meant his feet touched the floor beneath the trap he had fallen through. As a result, he as with many before, actually died from the hangman Thomas Turlis pulling on his legs.<sup>367</sup> Learning from the mistakes of Ferrers' send off, a 'new drop' became a permanent feature of London's executions; following a move of location to Newgate Prison in 1783.<sup>368</sup>

In line with their pioneering relocation of the site of execution in 1816, Durham led the way in the region with regards to scaffold adaptation. As has been discussed earlier in the chapter, the new location of Durham's scaffold was somewhat unique,

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<sup>363</sup> *Newcastle Journal*, 24<sup>th</sup> August, 1844.

<sup>364</sup> S. Webb, *Execution: A History of Capital Punishment in Britain* (Gloucestershire: The History Press, 2011), p. 89.

<sup>365</sup> *Ibid.*, p. 88.

<sup>366</sup> Laqueur, 'Crowds', p. 323. This first serious attempt at professionalising and in some way humanising a once brutal spectacle was further undermined by a misunderstanding between Ferrers and the hangman over a token payment, which resulted in an argument on the scaffold.

<sup>367</sup> N. Cawthorne, *Public Executions: From Ancient Rome to the Present Day: From Ancient Rome* (London: Arcuturus Publishing, 2006), p. 84.

<sup>368</sup> One newspaper reporting on a 1783 execution on the new drop carried very detailed descriptions of its design and the procedures undertaken. Of the execution it noted that 'nothing could surpass the decorum and solemnity with which this melancholy business was conducted.' *Jackson's Oxford Journal* December 12<sup>th</sup>, 1783.

owing to the available access via a first floor Grand Jury Room window. This 'balcony type' gallows were relatively rare, Dublin and Lancaster being amongst a handful of places with a similar arrangement before 1868.<sup>369</sup> Owing to the height of the windows the new scaffold was, in comparison to its predecessor, a vast contraption. Built so as to allow the condemned man to step cleanly through the window onto the platform, the scaffold had to sit perfectly in line with the window. This gave the authorities total control over the prisoner's presentation to the public as they could be transferred out of public site, through the adjoining prison, to the site of the scaffold, thus removing any risk of interference from the crowd. The scaffold was constructed in front of the County Courts and sat between two pillars that bestraddled the entrance. One newspaper gave a particularly detailed description of the scaffold at the execution of Jacob Frederik Ehlert in 1839.

The platform on which the prisoner stood was about eighteen feet from the ground, and upon a level with the floor of the Grand Jury room, from which access was obtained through a window, which was opened for that purpose. Two perpendicular pillars rise above the platform, about eight feet, and support a cross-beam, to which the rope is attached, the platform where the prisoner stands being so constructed as to fall down on the withdrawal of the iron bolt and leave him suspended in the air. The space below the platform is entirely closed in, except on the side next the Gaol, where access is obtained through the doorway, for the purpose of removing the body.<sup>370</sup>

Unlike at Durham, the scaffolds at Morpeth Gaol and at Mark Sherwood's Town Moor execution in 1844 had to be reached via steps. In the case of Morpeth these steps were built 'behind the scaffold' thus obscuring the criminal from public view until he was on the scaffold.<sup>371</sup> The alternative would have meant having to bring them out of the prison or courthouse and up the steps to the gallows, which carried the risk of the condemned interacting directly with the crowd. The authorities in Newcastle went to extreme lengths to avoid this problem in 1850. Instead of risking taking the prisoner, in full view of the crowd, on the short walk from the gaol's west

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<sup>369</sup> 'History of British Judicial Hanging,' accessed June 6, 2016, <http://www.capitalpunishmentuk.org/hanging1.html#gallows>.

<sup>370</sup> *Newcastle Journal*, 17<sup>th</sup> August, 1839.

<sup>371</sup> *Newcastle Courant*, 19<sup>th</sup> March, 1847.



facing entrance to the site of the gallows on the west wall, the authorities made a 'breach' in the prison wall, down to the 'basement course...about two feet above the level of the street.' This operation commenced on the Thursday evening and reports detailed that it was not completed until noon the following day, owing to the freestone walls being 'eighteen inches in thickness' and 'on account of the hardness of the cement.' The *Newcastle Journal* reported that 'each sound of the hammer tolled the knell of death to the miserable and unfortunate culprit' in his nearby cell. As in Morpeth, steps were still required, to take the prisoner up to the scaffold platform which stood nine feet from street level.<sup>372</sup>

One central change these new gallows had in the presentation of execution, was in hiding the majority of the body. In all cases in the North East, these new structures were surrounded by black scaffold or deal boards. This allowed the body to drop into an area masked from public view. Although reports state in a lot of cases that the head and shoulders were in view, it is clear that a person's view of the execution would vary wildly. In the case of Patrick Forbes' execution at Newcastle in 1850, the street used for the execution was on a steady incline and members of the public anywhere downhill from the scaffold would have most likely seen very little if anything of the body itself after the drop. These concealed areas also afforded the hangman a relative reprieve from the excoriations of the crowd, if he failed at his job.

In all cases the scaffold itself was not a permanent fixture. At Durham, as at Newgate, the scaffold was stored within the prison itself and returned after the execution. At an 1839 execution there were reports of it being 'dragged from its repository, where it had lain undisturbed from the execution of Jobling' some seven years previous.<sup>373</sup> There is further evidence to show that the authorities went to great lengths to conceal the gallows for as long as possible from public view. At the 1850 execution of Patrick Forbes at Newcastle' Carlol Square gaol, the night preceding his execution, the scaffold was 'prepared elsewhere' and surreptitiously, 'conveyed to the spot about midnight' In all instances in this period the scaffold's construction was commenced the day or night before the execution. It is unclear in what state of assembly it arrived, numerous reports noting 'the operation of fixing it together'

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<sup>372</sup> *Newcastle Journal*, 31<sup>st</sup> August, 1850.

<sup>373</sup> A reference to the 1832 execution of William Jobling. *Newcastle Journal*, 17<sup>th</sup> August, 1839.

implying in certain instances it was transferred in its constituent parts.<sup>374</sup> Similarly at Morpeth, reports from Joseph Charlton's execution in 1819 noted that 'a new gallows was erected on Tuesday night' ahead of his send off the following morning.<sup>375</sup>

The construction and style of the gallows themselves were remarkably similar across the region, differing really only in size. In the case of Newcastle and Morpeth, this is in large part owing to the fact that they were built by the same man, Newcastle Town Surveyor, Jas Wallace. Wallace's scaffold for Mark Sherwood's Town Moor execution, was the first of its kind in the North East after Durham. Similarly, the first 'drop' gallows at Morpeth, for the 1846 execution of Ralph Joicey, were built by Wallace and 'constructed on the same principle' as Sherwood's.<sup>376</sup> There were occasional calls for variation though. A year later a double hanging was called for in Morpeth and reports show that the scaffold had to be increased in size for the execution of George Matthews and James Welch. Reporting on its construction, one newspaper said that 'although similar' to Joicey's it was 'larger.' The dimensions were reported as '11 feet by 6 square, 10 feet high, and the drop 7 feet by 3 feet 6 inches.' As at Joicey's execution, the prisoner accessed the scaffold via a flight of steps situated 'behind the scaffold.'<sup>377</sup> The reason behind the increasing in size of the gallows is most likely so as to accommodate two men at once. The last double execution at Morpeth had been in 1822, that of Mark Lawson and William Currie, from which they were launched into eternity after the cart on which they stood was driven from under them. The only other double execution in the region in this period of semi-public execution was at Durham in 1860. Unlike at Morpeth, no adjustments were made to the scaffold for Thomas Smith and Milner Lockey.

The size of the gallows also dictated who it could accommodate. The scaffold used at Mark Sherwood's execution in 1844 was described in minute detail by the *Newcastle Journal*. In its entirety, it occupied a space of 'ten feet by eight feet.' The drop itself was estimated at 'nine feet by eight feet' and the beam from which Sherwood was hanged was nineteen feet high.<sup>378</sup> There is no explicit reporting of

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<sup>374</sup> *The Times*, 24<sup>th</sup> August, 1850.

<sup>375</sup> *The Last Dying Words of Joseph Charlton*, (Pollock: Alnwick n.d.).

<sup>376</sup> *Newcastle Journal*, 21 March, 1846.

<sup>377</sup> *Newcastle Courant*, 19 March, 1847.

<sup>378</sup> *Newcastle Journal*, 24<sup>th</sup> August, 1844.

who was attendant on the scaffold, but the disparity between the scaffold's measurement and the drop itself being only one foot, it would appear unlikely that there was room for anyone other than the hangman. This is at odds with practice witnessed elsewhere in the period. In her work on execution in Scotland, Bennett has shown that when execution in Edinburgh was moved from the Grassmarket to Luckenbooths ('closer to the place of confinement') in 1785, alongside the move, the scaffold was made far more impressive in scale. The reasoning for the increased structure was to accommodate not only the condemned man and his executioner, but also the 'magistrates, clergymen and officers' and with them an increased solemnity that had 'previously been wanting.'<sup>379</sup> Durham's scaffold appears more in line with those described by Bennett, at John Grieg's execution in 1816, after he stepped out of the Grand Jury Room window on to the scaffold, the newspapers report him as being followed on by the 'Under Sheriff... Governor of the Gaol followed by the Rev. Robert Blackett, the executioner and two bailiffs'<sup>380</sup>

## Conclusion

This chapter has shown that executions in the North East between 1800-1868 were frequently subject to experimentation. It was a period in which the whole nature of the execution spectacle changed, from its location to the appearance of the apparatus of death. To some extent these executions defy simple categorisation, floating as they do somewhere between the established forms of eighteenth and early nineteenth century public executions and post 1868 private executions. They share elements of both spectacles and therefore are probably best understood as either 'semi-public' or 'semi-private', being as they are hybrids of both. What is clearer is that it was a period in which an antiquated and amateurish spectacle was becoming slowly professionalised and increasingly removed from public view.

So, where does the experience of the North East in this period sit in the wider narratives of changing punishment; in short it offers somewhat of a clouded and incoherent picture. There is no one singular understanding of how and why

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<sup>379</sup> Bennett, *Capital Punishment*, p. 133.

<sup>380</sup> *Durham County Advertiser*, 24th August, 1816.

punishment changed in the region. Northumberland's extant historical record, deprives us of a detailed understanding of the motivations for change, however, what is clear is that they happened far sooner than has been previously recorded. Durham would appear to fit neatly into the wider models of change recognised elsewhere as part of a 'civilizing' process, brought about by the increasing restrictions the processional nature of fully public previous executions placed on commerce. Newcastle however appears detached from both of these experiences. The obvious suggestion then is that Newcastle, as people had previously mistakenly thought of Northumberland, was something of an outlier or a disconnected other. However, the picture is more complex as Newcastle offers the curious confluence of civilizing narratives being at the heart of debates at Town Council level on punishment in 1844, mere months after a man is being strangled in front of tens of thousands of people on the Town Moor. We have then a need to understand the presence of competing claims in this period. Furthermore, we must acknowledge the motives for attendance at a spectacle as being more complex than has often been allowed. Indeed, in the limited instances of personal accounts of witness available to the historian of Newcastle we have a man, Richard Lowry, seeking a place as close to the gallows to afford the best view, whilst simultaneously being an advocate of the spectacle's abolition.

Another finding of this chapter is that the North East's comparatively late adoption of these changes appears to have been overplayed. Northumberland, contrary to previous studies, actually underwent a comparatively early transition to more central sites of execution, firstly to the east of the town at Low Stanners and latterly immediately behind the gaol. Similarly, Durham undertook changes broadly in line with nearby York and for similar reasons, the alleviation of traffic being key. In this sense it is only Newcastle that was comparatively very late to change. In one sense this was owing to circumstances beyond its control, a nearby crush in Nottingham putting paid to plans for a more recognisably 'semi-public' spectacle in the hanging of Mark Sherwood. However, the site of Carlisle Square Prison was available for the execution of Jane Jameson in 1829 and yet went unused. The experience of Newcastle then arguably hints at a second possibility. The limited frequency of capital punishment in the region may well have placed the administering of capital punishment far down the authorities' agenda. Indeed, in the

only two instances in which execution took place without the prison walls, the solutions were last minute and reactive to circumstances, Vass's being a prime example of how an upgrade in the prison architecture, which led to a relocation of female felons next to where Patrick Forbes was hanged, had not been undertaken with consideration for its effect on siting future executions.

The changing location, presentation and staging of the execution in this period clouds any notion of a simple transition from a public to a private form of execution, commonly demarcated by the 1868 Capital Punishment Amendment Act. Instead the nuances of presentation from region to region defy simple categorisation. There were similarities in presentation, but there was no one unified experience of execution in this period in the North East, let alone the country as a whole. Similarly, there are anomalies in the stories of transition in the North East. In the case of Mark Sherwood's execution, Newcastle was the only region to adopt the drop system at a non-jail sited execution and the eventual site of the execution was never used before or after. Similarly, in Northumberland, although moving to a location behind the old gaol the authorities initially retained older elements of the spectacle including elaborate processions and a cart gallows.

The clearest evidence of regional similarity in the presentation of executions is in the gallows structures themselves. Although showing slight variations in size and construction details, there are remarkable likenesses in the gallows used across the North East. These new gallows were deliberately imposing structures, numerous reports stating how the scaffold boards surrounding the drop were 'painted black' to increase the solemnity and fear of the structure.<sup>381</sup> They stood high above the attendant crowd, thus removing them from the immediate vicinity of the prison and in all cases of their use were accessed either via steps or through a hole in the prison wall or window that meant the prisoner was never seen until on the scaffold itself. The authorities in Morpeth going so far as to place the scaffold itself a further step removed, by positioning it behind the gaol's iron palisades.

The construction of these gallows further complicates any notion of a simple public

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<sup>381</sup> *Newcastle Courant*, 19<sup>th</sup> March, 1847.

and private form of execution when we consider what the crowd actually saw. The distinction between public and private executions is often demarcated primarily around the public visibility of the spectacle and the body. However, as this chapter has shown even at some 'semi-public' hangings the hanging body may have only been seen by a select few, in privileged positions. The combination of a newly concealed 'drop' area, tighter controls on the crowd and the hooded head of the prisoner meant, at most, someone with a good view would have seen a covered head and shoulders swinging above the scaffold drop. Indeed, in certain instances, it is debatable as to whether the majority of the crowd saw the body at all, either obscured by snow, as at Milner Lockey and Thomas Smith's double execution at Durham, or by the siting of the scaffold at George Vass's Newcastle Gaol roof execution in 1863.<sup>382</sup>

This middling period of execution therefore marks an era in which the presentation of punishment increasingly became a sort of penological peep show, a macabre spectacle in which the crowd were shown just enough to satisfy their demands and satiate their desires whilst often barely seeing the actual body hang. This is an important consideration when one acknowledges that the public nature of punishments had as much to do with 'political accountability' as it was a 'thunderous reaffirmation' of the state's power.<sup>383</sup> If the death had not been witnessed, what role had the crowd played.

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<sup>382</sup> Reports of Thomas Smith and Milner Lockey's double execution at Durham execution noted that a combination of deep fog and a snow blizzard had meant that 'the ghastly scaffold and its occupants were scarcely visible at the distance of a few yards.' *Newcastle Journal*, 29th December, 1860.

<sup>383</sup> Morgan and Rushton, *Rogues, Thieves* p. 125; Laqueur, 'Crowds', p. 308.

### Chapter Three:

#### **‘A More Lively Dread’: Execution Behind the Prison Walls in the North East of England 1868-1878**

It is not improbable that murderers may have a more lively dread of private than public executions. There is something in man which not unfrequently makes a coward appear brave when exposed to the gaze of spectators. But this incentive to an exhibition of daring hardihood is absent when a man is placed upon the drop within the high walls of a prison and in the presence of only a few onlookers.<sup>384</sup>

The public believe more in the disinterested and unbiased opinions and reports of the public press than they do in a purely official report, when it is not capable of contradiction.<sup>385</sup>

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<sup>384</sup> *Newcastle Courant*, 26<sup>th</sup> March, 1869. p.5

<sup>385</sup> Letter by an Inquest Juryman addressed to the Visiting Justices. *Newcastle Courant*, 16<sup>th</sup> January, 1874.

Granted Royal Assent on the 29<sup>th</sup> May 1868, The Capital Punishment Amendment Act dictated that from henceforth,

‘Judgment of death to be executed on any prisoner sentenced on any indictment or inquisition for murder shall be carried into effect within the walls of the prison in which the offender is confined at the time of execution.’<sup>386</sup>

In one sentence a punishment that for centuries had gained legitimacy through its public presentation had been fundamentally reformed, henceforth the public were to be removed from the execution scene.

For a remarkably long period, this ‘landmark’ Act had been accepted as the apogee of a wider European civilizing process,<sup>387</sup> one in which a growing distaste for public violence saw the steady removal of the public element of traditional punishments for which the execution was the hideous zenith. In this context, its removal from public sight has been largely seen as being part of a ‘special category of measures...that contributed to the progress of civilization in England.’<sup>388</sup> Only recently has the orthodoxy of this ‘simple record of progress’ been called into question.<sup>389</sup> Gatrell notably asserted that whilst, ‘we cannot deny that 1868 was a civilizing moment’ it does not therefore mean, ‘1868 marked a *humane* moment in British History.’<sup>390</sup> This line of questioning of the true intentions of the act itself is present in several recent studies, amongst them Randall McGowen’s, in which he astutely points out that the act itself required the votes of staunch supporters of capital punishment’s continuation to be carried.<sup>391</sup> Indeed, following the act the cause of abolitionism was left to a ‘thin thread of dedicated abolitionists.’<sup>392</sup>

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<sup>386</sup> Capital Punishment Amendment Act 1868, c. 24 (Regnal. 31\_and\_32\_Vict). Available at <http://www.legislation.gov.uk/ukpga/Vict/31-32/24/section/2>. Accessed 17th March 2017.

<sup>387</sup> D. Cooper, *The Lesson of the Scaffold* (Penguin: Allen Lane, 1974), p. 178.

<sup>388</sup> R. McGowen, ‘Civilizing Punishment: The End of the Public Execution in England,’ *Journal of British Studies*, 33, no. 03 (1994), p. 257.

<sup>389</sup> J. A. Sharpe, ‘Civility, Civilizing Processes, and the End of Public Punishment in England,’ Peter Burke and Brian Harrison (eds.) in *Civil Histories: Essays Presented to Sir Keith Thomas* (OUP: Oxford, 2000), p. 215.

<sup>390</sup> Gatrell, *The Hanging Tree*, p. 590.

<sup>391</sup> McGowen, ‘Civilizing Punishment.’ p. 258.

<sup>392</sup> H. Potter, *Hanging in Judgement: Religion and the Death Penalty in England from the Bloody Code to Abolition*, (SCM Press, 1993), p. 97. For a detailed history of the abolitionist movement see J.



Amongst this burgeoning school of criticism a more general consensus has arisen that to a large extent 'humanity was neither here nor there' in the move away from public punishment and that the exclusion of an increasingly problematic crowd was at the heart of the legislative change.<sup>393</sup> However, what is remarkable in all these studies is the absence of any detailed analysis of the practical reality of execution itself after the 1868 act. Even in works critical of its motives, the 1868 Act has acted as a symbolic endpoint, or in Gatrell's case an epilogue, and as such has inadvertently attained the status of a metaphorical Mount Olympus from which to look down at the brutal past from.

The most notable attempts to plug this gap have been undertaken elsewhere. Linders, arguing of the earlier transition in America, that what was 'initially conceived of as a simple adjustment to the execution event...turned the execution into an event that was qualitatively different from the public execution.' While insightful, the arguments made are not immediately transferable as the transition in America started earlier and was not universally enacted, its take up being a much slower and more nuanced process.<sup>394</sup> Similarly, whilst recent pathbreaking studies into the 'cultural life' of execution post 1868, have given fascinating new insight into the era of private execution most notably in the twentieth century, it is noteworthy that the first serious attempt to look at executions in the immediate aftermath of the 1868 act have come from the school of journalism.<sup>395</sup> In his work on execution reports in Lincoln post-1868, John Tulloch talked of the press's role as execution reporters in the 'construction of modernity' positing that they allowed for a 'mediated publicness...in which publicness no longer depends on sharing a particular location.' In this sense the press were 'surrogates for the middle-class public', the hope being that by receiving this special status they would 'more readily follow the truncated and

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Gregory, *Victorians Against the Gallows: Capital Punishment and the Abolitionist Movement in Nineteenth Century Britain* (I. B. Taurus, 2011).

<sup>393</sup> Gatrell, *The Hanging Tree*, p. 591.

<sup>394</sup> A. Linders, 'The Execution Spectacle and State Legitimacy: The Changing Nature of the American Execution Audience, 1833-1937', *Law & Society Review*, 36 (3) (January, 2002), p. 608, 616. Linders notes that the commonly held consensus is that transition from public to private executions began in 1833 in Rhode Island and didn't reach certain states for another one hundred years (Missouri 1937). Although Linders concedes that there is evidence that as early as 1830 the New York Sheriff had the 'discretion to arrange execution away from the public's gaze.'

<sup>395</sup> L. Seal, *Capital Punishment in Twentieth-Century Britain: Audience, Justice, Memory*, (Routledge, 2014);

sanitized narrative' provided by the authorities and prison officials present.<sup>396</sup> It is in continuation of this fledgling inquiry that this chapter sits. It seeks to address the gap in our historical understanding of executions in the immediate aftermath of the 1868 Act, with specific reference to the North-East. Only by analysing the actuality of executions in this period, can we begin to assess any gap between the Act's intentions and its reality and reception. The focus will be on the decade between the act's ascension in 1868 and the 'radical measure' of the nationalization of the Prison system in 1878.<sup>397</sup> In as much it is a study of the final period of truly local control over the administration of punishment.

In relation to the North East, this chapter argues that there was no simple uniformity of application or linear narrative across the region over this period. Indeed, in the incidence of its use and application Durham, Newcastle and Northumberland differed greatly. Furthermore, in Durham, far from a retrenchment of capital punishment, we see a huge increase in its application with 13 of the 16 executions in the region taking place there; a concomitant rise that is entirely absent in Newcastle and Northumberland. Through an examination of the social make-up of the executed it will be argued that this spike may be accounted for as a reaction to a wider national response to fears of Irish Nationalism. A finding that has implications for previous scholars' assertions of the role of the Irish in the North East in this period.

Secondly, this chapter asserts that ambiguities inherent in the 1868 act itself led to a wildly differing approach to the presentation of execution across the region; most notably in the access allowed to the press. Through a detailed study of the press reporting of the execution in the period it will be shown that admittance to and presentation of the spectacle differed from place to place. The one execution that took place in Newcastle in the period had the press in attendance, whilst Durham frequently did not and in the case of the two executions at Northumberland it is certain that at least one, if not both, were blocked to the press.

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<sup>396</sup> J. Tulloch, 'The Privatising of Pain: Lincoln Newspapers, 'Mediated Publicness' and the End of Public Execution,' *Journalism Studies*, 7 (3) (June, 2006), p. 449.

<sup>397</sup> J.F. Harrison, 'The Justices and the Prison Act, 1877: The Example of Wakefield' *Northern History*, 39 (2) (September, 2002) p. 245.

Finally, most notably in the case of Durham, it is apparent that the Sheriff and Visiting Justices took measures to gain increasing control over the presentation of the executions themselves, particularly in what was reported and what the press had access to. These increasing restrictions on access were largely a response to early executions in the period that were poorly managed. The press, as representatives of the public, were steadily withdrawn from the execution itself and came to rely on an 'official' report provided at the post-execution inquest over the body. This steady ratcheting of control and attempts to control the messages emanating from the execution spectacle were a reaction to a number of factors; most notably press reports proclaiming last dying speeches of innocence, botched hangings by an increasingly decrepit executioner, William Calcraft, and an oversubscription in applications by the press to two executions in 1873. These factors resulted in increasingly draconian measures being undertaken to make sure later executions in the period passed with minimal sensationalism in reporting and divergence from the central message intended by the dread sentence of the law; a strategy that more often than not failed.

### **Incidence, application and the Irish problem**

In the ten years between the Capital Punishment Amendment Act and the introduction of central control of the spectacle through the Prison Act 1877 the punishment of private execution was enacted sixteen times in the North East regions sampled, as many hangings as had taken place in the previous four decades prior to the act.<sup>398</sup> Despite this marked rise, these figures mask spikes in particular years and also notable gaps. Indeed, there were no executions undertaken in the year of the acts' introduction and similarly none took place between 1870-1872 and in 1877. In the years sampled, there is clear disparity in its application and incidence by region. Figure 7 shows that of the sixteen executions undertaken, thirteen took place in

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<sup>398</sup> Between 1823-1868 there were sixteen executions in the North East regions sampled, equivalent to the first decade following the 1868 Capital Punishment Amendment Act; *The Prison Act 1877* transferred all local prisons to the control of central government with effect from April 1<sup>st</sup>, 1878. One execution took place in the North East in the year of 1878, following the introduction of the Prison Act, that of Robert Vest on 30<sup>th</sup> July at Durham as such Vest's execution has been evidenced in this chapter but not included in the figures. His was only the second to have taken place in the country under this new system of control. The first being that of Charles Revell, the day prior, at Chelmsford. In line with broader national changes in the criminal law, established in the previous chapter, in all cases the punishment was for crimes of murder.

Durham (81.25%), two in Morpeth (12.5%) and only one in Newcastle (6.25%). The rise in Durham is particularly pronounced when compared with previous decades. In the period between 1800-1868 Durham undertook 17 executions, just four more than it enacted in the first decade of the Capital Punishment Amendment Act. The spike in its application in this period in Durham then is clearly remarkable, even more so when set against the wider Northern Circuit and national pictures (see figure 8). Between 1800-1830 Durham's execution figures never amounted to more than 3% of those of the Northern Circuit as a whole. In stark contrast between 1868-1878 Durham was the second largest contributor to the gallows, accounting for just under one third (32.65%) of the executions on the circuit.

On a national scale, as figure 9 shows, in peak years most notably 1873, Durham accounted for up to 37.5% of all executions in England and Wales.<sup>399</sup> More strikingly, given previously discussed historical disparities between the North East and London's execution rate, in the same ten-year period London undertook sixteen executions, only two more than Durham.<sup>400</sup> By comparison Newcastle accounted for only one execution in this decade. This would appear broadly in line with earlier figures in which six executions took place between 1800-1868, an average of roughly one a decade. Similarly, Morpeth's two executions between 1868-78 appear broadly in line with the average of two a decade in the years between 1800-1868.<sup>401</sup>

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<sup>399</sup> National figures have been drawn from the compiled statistics at <http://www.capitalpunishmentuk.org/1868.html> . Accessed 11th March 2018).

<sup>400</sup> When one considers disparities between the North East and London, identified in the eighteenth century, this rise is particularly remarkable. King & Ward, *'Rethinking'*, pp.159-205.

<sup>401</sup> There were 12 executions in Northumberland, one took place at Westgate in 1805 (Thomas Clare), the final of its kind and the other 11 at various locations in Morpeth, detailed in chapter two. *The Confession and Dying Words of Thomas Clare, who was Executed on Friday, August 16, 1805, the West Gate, Near Newcastle Upon Tyne, for the Wilful Murder of William Todd, Late of Hartley, Pitman*, (Newcastle: D. Bass, 1805). NCL *Local Broadsides* (L.029).

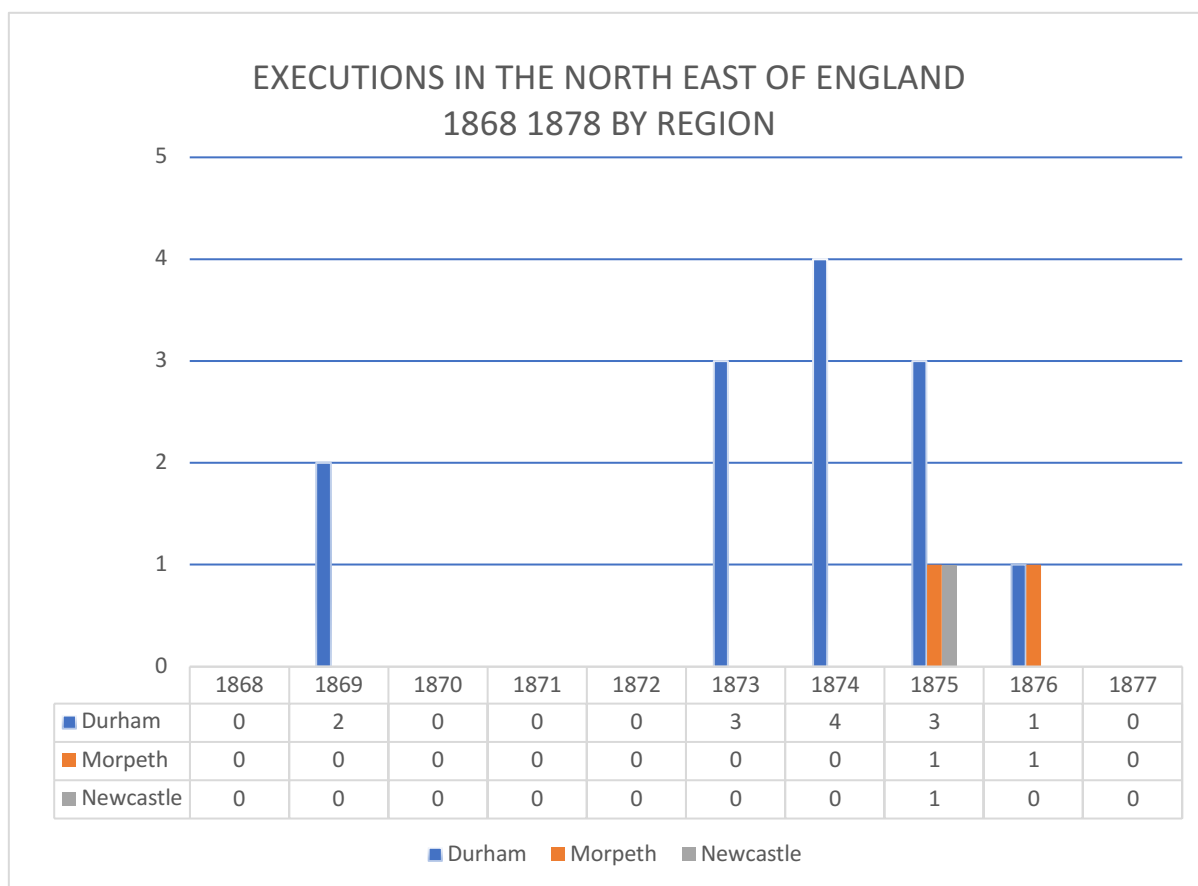


Figure 7 - Executions in the North East of England 1868-1878 by region. Source: Assize Court Records and Records of the Palatinate of Durham

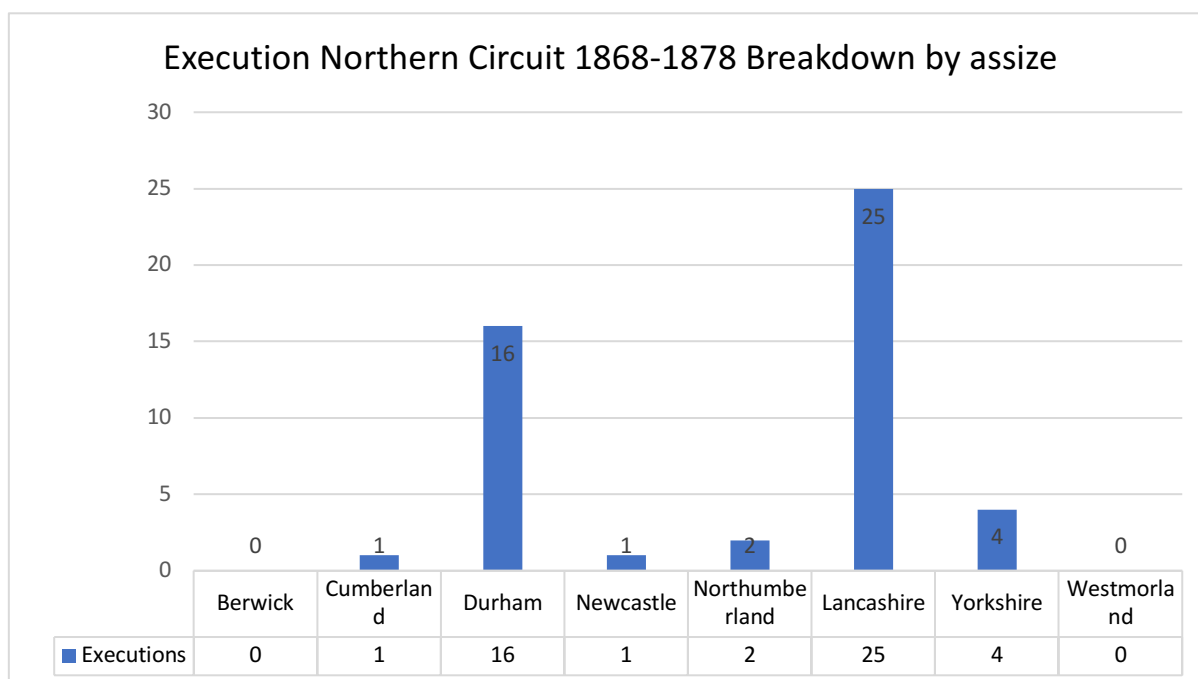


Figure 8 Executions on the Northern Circuit 1868-1878 breakdown by assize county. Source [www.capitalpunishmentuk.org](http://www.capitalpunishmentuk.org)

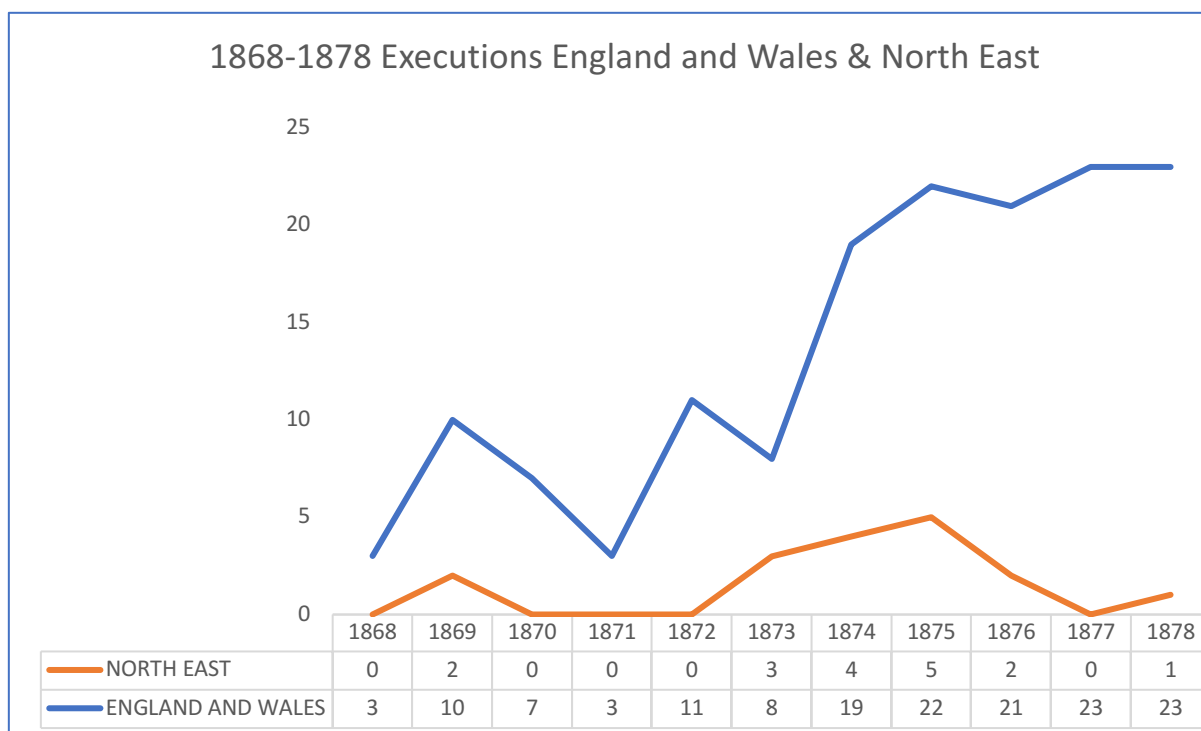


Figure 9 - 1868-1878 Executions in England & Wales and the North East (Durham, Newcastle and Northumberland). Source [www.capitalpunishmentuk.org](http://www.capitalpunishmentuk.org)

As with incidence of application, so disparities in gender are apparent across the region. Of the sixteen people that met this grim fate, fourteen were male and two female, both cases of female executions taking place at Durham.<sup>402</sup> In England and Wales between 1868-78 only seven women were executed in total, which means Durham accounted for over one fifth (28.5%) of female hangings in this period.<sup>403</sup> Additionally, in the instances of its use in Newcastle and Morpeth the executions undertaken were only single executions. In Durham, however, we see the return of much older practices, notably the double and triple hanging. In the period surveyed two double executions and two triple executions took place at Durham, neither of which had been seen for just under a century.<sup>404</sup>

The marked difference in the regional application of execution in this period was a prominent feature in the local press. Reporting on the aftermath of the Summer assizes in 1875, the *Northern Echo* railed that,

‘The County of Durham has long possessed an evil notoriety in the records of violent crime, but its murderous renown never stood higher than it does today. The gallows usually casts its weird and ghastly shadow across the County Palatine, but even in murder-haunted Durham, the oldest and most hardened inhabitants have been startled at the number of murderers.’

The paper went on to lament, that ‘if matters do not mend the County will become as famous for its murders as it was once for its mustard.’<sup>405</sup>

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<sup>402</sup> Mary Ann Cotton (1873) and Elizabeth Pearson (1875); DURH 15/10

<sup>403</sup> Figures from England and Wales taken from <http://www.capitalpunishmentuk.org/1868.html> accessed 9th April 2018. The women executed were Priscilla Biggadyke (1868, Lincoln), Margaret Waters (1870, Surrey), Mary Ann Barry (1874, Gloucestershire), Frances Stewart (London, 1874), Mary Williams (Lancashire, 1874) and Selina Wadge (Cornwall, 1875).

<sup>404</sup> The last instances of double and quadruple hangings in the region took place at Durham in 1786 and 1785 respectively. The quadruple hanging was undertaken at Dryburn, Durham, on 1<sup>st</sup> August 1875 and saw William Hamilton and Isabella Hamilton, his wife, hung for housebreaking alongside Duncan Wright, for housebreaking and Thomas Elliot for horse stealing. There are notable other examples in this period (1868-78) of the return of triple executions. One such took place at Maidstone where James Tooth, Francis Bradford and Thomas Moore were hung together on 13<sup>th</sup> August 1872. The execution was Reported in *The Scotsman* August 14<sup>th</sup>, 1872 under the headline ‘Triple Execution at Maidstone’.

<sup>405</sup> *Northern Echo*, July 13<sup>th</sup>, 1875.

This disparity in the incidence of its application appears to further validate earlier findings in this thesis that Durham consistently applied the punishment of hanging far more than its neighbouring counties. In this sense these further corroborate earlier studies of the region which identified, of the eighteenth century, that Durham took a unique approach to penal outcomes from its neighbours.<sup>406</sup> Whilst these earlier works have noted the difficulty of explaining these differences, it would appear in this period that there is one notable differentiating factor, the Irish.

A closer look at the make-up of the executed would appear to have implications for previous findings on the Irish community in the North East, particularly in Durham. Earlier studies of these communities in this period have noted 'the scarcity of 19th-century material' as evidence of the 'minimal amount of hostility they provoked among the indigenous population.'<sup>407</sup> However, of the thirteen people executed in Durham in this period at least seven were Irish, accounting for (43.75%) of all executions undertaken in the region in this period and just over half (53.8%) of all executions in Durham.<sup>408</sup> These findings would appear more in line with recent reassessments of Anglo-Irish relations in the North East which have presented a more complex and less co-operative picture.<sup>409</sup>

When set against census population figures between 1851 and 1881 the figures on execution in Durham are particularly remarkable. As Table 2 illustrates, in 1871 the Irish-born population of Durham was recorded at 37,515 (5.5%). Even accounting for widely acknowledged underestimations in the recorded Irish population, these are

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<sup>406</sup> Morgan and Rushton, *Rogues and Thieves*, p. 77

<sup>407</sup> R. Cooter, 'The Irish in County Durham and Newcastle c.1840-1880.' (PhD DIss., Durham University, 1972), p. iv. <http://etheses.dur.ac.uk/1907/>. Accessed 17th April, 2017; R. Cooter, *When Paddy Met Geordie: The Irish in County Durham and Newcastle, 1840-1880* (University of Sunderland, 2005).

<sup>408</sup> John Dolan (1869), John McConville (1869), Hugh Slane (1873), John Hays (1873), Hugh Daley (1874), William McHugh (1875), Michael Gilligan (1875).

<sup>409</sup> Most notable amongst these recent revisionist studies are F. Neal, *English-Irish Conflict in the North-East of England* (Salford: University of Salford Press, 1992); 'Irish Settlement in the North East and North-West of England in the Mid-Nineteenth Century' in R. Swift & S. Gilley (eds.) *The Irish in Victorian Britain: The Local Dimension*, (Dublin: Four Courts Press, 1999); D. M. Jackson, "Garibaldi or the Popel': Newcastle's Irish Riot, 1866', *North East History*, 35 (2001), pp. 49-76. For a reassessment of the attitudes towards Catholicism in this period in the North East see J. Bush *'Papists' and Prejudice: Popular Anti-Catholicism and Anglo-Irish Conflict in the North East of England, 1845-1870*, (Cambridge: Cambridge Scholars Publishing, 2014).



therefore remarkable figures.<sup>410</sup> In the first decade of private execution over half of those executed in Durham were drawn from a community that made up a little over 5% of the regions' population. The question therefore is why.

Census Year	Northumberland	%	Durham	%
1851	12,666	5.1	18,501	4.7
1861	15,034	5.1	27,729	5.5
1871	14,506	5.4	37,515	5.5
1881	10,414	4.7	27,663	3.2

Table 2: Irish-born populations of Northumberland and Durham 1851-1881. Source: Census of England and Wales 1851 -1891.

Previous studies have noted how 'persistently overrepresented' Irish-born migrants were in the Magistrates courts in the period.<sup>411</sup> Indeed judicial statistics from the mid nineteenth century frequently noted the high proportion of Irish men and women in prison. In 1865 one report, despite noting a 'slight decrease' in the national picture, recorded that Irish males accounted for 12.3% of all prisoners in England, compared to Wales 2.5% and Scotland 1.8%. Whilst females accounted for a remarkable 21.9%, the report in acknowledging this disparity argued that the 'females from the sister Isle' had a 'knack' for getting into trouble.<sup>412</sup> Whilst previous works have acknowledged this disproportionality of Irish-born in the prison population, until now it has been asserted that the crimes were 'overwhelmingly petty in character.'<sup>413</sup> The findings here would appear to counter these assumptions.

In one sense, a certain overrepresentation of Irish-born capital prisoners is not to be unexpected. In the longer history of execution in the region, as elsewhere across England, executed felons were drawn predominantly from the labouring poor.

<sup>410</sup> Previous studies have noted that census figures alone cannot give a full picture as they only included the Irish born and also a 'large proportion were not household heads.' F, McDonnell, 'The Irish in Durham City, 1841-1861', *Durham County Local History Society Bulletin* Number 47 (Dec, 1991) p. 68.

<sup>411</sup> D. M. MacRaild, *The Irish Diaspora in Britain, 1750-1939*. 2<sup>nd</sup> ed. (Basingstoke: Palgrave MacMillan, 2011), p. 168.

<sup>412</sup> J. T. Hammick, 'On the Judicial Statistics of England and Wales, with Special Reference to the Recent Returns Relating to Crime', *Journal of the Statistical Society of London* 30, no. 3 (1867): p. 415. <https://doi.org/10.2307/2338841>. Accessed 11th December, 2018.

<sup>413</sup> MacRaild, *The Irish Diaspora in Britain*, p. 168.

Studies have noted the high propensity of Irish labourers in the North East in the mid to late nineteenth century, more particularly their predominance in Durham's Ironmongering trade.<sup>414</sup> Similarly, previous assessments have noted that the Irish formed a 'larger than usual' percentage of the population in the North East accounting for 5.5% in 1871 compared to 3% in England.<sup>415</sup> Furthermore, early work on prison statistics in Durham has illustrated the high proportionality of Irish men amongst Durham's prison population in this period.<sup>416</sup> When combined with execution figures then these findings would appear to undermine previous assessments of the region as having a markedly less fractious relationship with Irish immigrants than other regions in the period, most notably Liverpool, London and Manchester. In particular it would appear that Durham may have been susceptible to the same strains of 'Fenian panic' identified in London, Manchester and Scotland in this era.<sup>417</sup>

The Fenian movement was dedicated to the establishment of an Irish Republic. It originated in response to the Great Famine of the mid 1840s, in Ireland, which had devastated the population. The group rose to national prominence following failed attempts to rescue political prisoners. The first, in Manchester in 1867, resulted in the death of a police officer and the second, an unsuccessful attempt a few months later to free Fenian prisoners by blowing through Clerkenwell Prison wall. This failed escape led to the capture and execution of Michael Barratt, who was to become the last man publicly executed in England. These incidents, along with a rising resentment and growing itinerant Irish labouring class created a 'Fenian Panic' that has been widely acknowledged in the 1860s and early 1870s and even spread across the Atlantic with American splinter groups and panics of uprisings in, amongst other places, Prince Edward Island.<sup>418</sup> McFarland has noted how, in Scotland in this

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<sup>414</sup> Ibid., p. 56

<sup>415</sup> F. McDonnell, 'The Irish in Durham City', p. 68. Although larger than usual, it was by no means exceptional. Indeed, figures from the *1851 Census of England and Wales* note that as a percentage Durham's and Northumberland's Irish born population (4.4%) was well below that of the North-West (8.6%). McRaid, *The Irish Diaspora in Britain*, p. 168.

<sup>416</sup> M. McManus, 'Folk Devils and Moral Panics? Irish stereotyping in Mid-Victorian Durham', *Bulletin of the Durham County Local History Society*, 53 (1994), p. 35.

<sup>417</sup> E. W. McFarland, A Reality and Yet Impalpable: The Fenian Panic in Mid-Victorian Scotland, *The Scottish Historical Review* Vol. 77, No. 204, Part 2 (Oct, 1998), pp. 199-223.

<sup>418</sup> For a detailed history of the 'Fenian Problem' and the state's response in this period see B. Jenkins, *Fenian Problem: Insurgency and Terrorism in a Liberal State, 1858-1874*, (London: McGill-

period, the term 'Fenian' became synonymous with Irish nationalism and came to be used for 'designating any Irish nationalist.'<sup>419</sup> It would appear that the North East was no less susceptible.<sup>420</sup> Reporting in January 1868, the *Newcastle Journal* ran an article entitled 'FENIAN ALARM IN DURHAM – A RISING OF FENIANS APPREHENDED.' The report detailed how on the night of Monday 6<sup>th</sup> January a rumour of an 'intended Fenian rising in Durham became somewhat general, and much alarm was created.' In response Special Constables were called and local forces, amongst them the North Durham Militia, congregated at the Gilesgate barracks but 'not the slightest disturbance' was observed.<sup>421</sup>

Further evidence of this fear can be seen in a number of the capital convictions in this period in the North East. Three particular capital cases in this period pay testament to the possibility of a more fractious relationship than previous studies have suggested of the North East and the presence of a Fenian Panic. The first two cases were double executions and both of the condemned men were Irish Catholics and from the labouring classes. The first in question was the double execution of John Dolan and John McConville at Durham Prison on the 22<sup>nd</sup> March, 1869.<sup>422</sup> Reporting on their crimes the newspapers made particular reference to Dolan's appearance, *The Times* noting that he was 'representative of the very lowest type of the Irish character', the *Newcastle Courant* was similarly scathing of his 'heavy and repulsive cast of countenance.'<sup>423</sup> Following the trial, however, it was McConville that became a particular figure of contention as numerous reports arose linking him with the Fenian movement. *The Times* in their unusually detailed report of the execution,

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Queen's Press, 2008). On the spread of Fenianism see E. MacDonald, 'Who's Afraid of the Fenians? The Fenian Scare on Prince Edward Island, 1865-1867', *Acadiensis* 38 (1) (2009), pp. 33-51.

<sup>419</sup> G. Vaughan, *The 'Local' Irish in the West of Scotland 1851-1921*, (Basingstoke: Palgrave Macmillan, 2013), p. 109.

<sup>420</sup> For the response of Catholic Priests to counter nationalist sentiment amongst Irish-born immigrants in the North East see, D. MacRaid, "Abandon Hibernisation": Priests, Ribbonmen and an Irish Street Fight in the North-East of England in 1858\*, *Historical Research*, 76 (194) (2003), p. 560. The relative success of these efforts has been questioned in other studies of the period noting reluctance by nationalists to heed the words of Catholic Priests stemming from a widespread belief that they had first 'encouraged and then betrayed' the rebellion of 1848. The Young Irelander Rebellion of 1848, often referred to as the Battle of Ballinagarry, was an unsuccessful uprising by Irish Nationalists. The rebellion has been described as a 'pivotal event' in the founding of Fenianism. F. Rynne, 'Young Ireland and Irish Revolutions', *French Journal of British Studies* no. XIX-2 (September, 2014), p. 105.

<sup>421</sup> *Newcastle Journal*, 8th January, 1868.

<sup>422</sup> DURH 15/9.

<sup>423</sup> *The Times*, 23<sup>rd</sup> March, 1869; *Newcastle Courant*, 26<sup>th</sup> March, 1869.

mentioned rumours afoot, following the trial, of McConville's 'Fenian proclivities' and reported that it was being said that he had been 'made' at Manchester during the time that an 'attack had been made on a prison van.' The paper further reported that it was believed that McConville was a 'Head-Centre' at the time, a serious allegation in the febrile political climate.<sup>424</sup>

The apogee of this fear was reached at the next execution to take place in the region: the double execution of two men, both Irish Catholics. Following the murder of shopkeeper Joseph Waine, at Spennymoor, four men were initially sentenced to death at Durham, (John Hays, George Beesley, Terence Rice and Hugh Slane).<sup>425</sup> However, efforts by interested parties following the trial, including detailed further examinations of the scenes, led to a successful move for a reprieve in the cases of Terence Rice and George Beesley. Reporting on the reprieves the *Shields Gazette* welcomed the decision by the Home Secretary but made clear that this would not be a sentiment shared by the people of Durham, 'If the Jury had been supreme in dealing with the Spennymoor murder, Rice and Besley (sic) would have been in their graves this afternoon.'<sup>426</sup>

It would appear that speculation surrounding the case had largely focused on potential connections between the culprits and the Fenian movement. One petition to the Home Secretary, numerous signed, stated that reports in 'some' of the newspapers of Durham, Northumberland and York had prejudiced the case. The primary claim was that 'certain sensational articles' had insinuated that 'the deceased man's death was caused by members of a secret society.' So strong was this feeling that the petitioners claimed there hadn't been sufficient time between the crime and the trial for the 'minds of the jury to cool down.'<sup>427</sup> It would appear that these fears were not without foundation, indeed reports of this nature appear to have spread farther than the North-East. Reporting on the upcoming Durham Assizes, at which the four were to be tried, the *Manchester Evening News* noted of the crime

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<sup>424</sup> *The Times*, March 23<sup>rd</sup>, 1869; A 'Head-Centre' was an appointed representative of a particular region or area. A similar practice was apparent in America. W. D'Arcy, *The Fenian Movement in the United States: 1858-1886*, (Washington D.C.: Catholic University of America Press, 1947), p. 59.

<sup>425</sup> DURH 15/10. Hays is numerous referred to as Hays or Hayes in the regional press and in petitions. Although his Home Office files and execution report detail him as Hays.

<sup>426</sup> *Shields Gazette and Daily Telegraph*, January 6, 1873.

<sup>427</sup> Petition to Home Secretary H. Bruce M.P. HO 144/5/18516/11

that 'the only cause assigned was the refusal of the poor fellow to join the Fenians.' The paper went on to state that 'such is the fear of the Fenians that it was thought advisable to call a Coroner's court at an adjacent district.'<sup>428</sup>

One letter summarizing Judge Denman's view on a reprieve for Beesley and Rice noted of the case that, 'so far as he could guess it was a case of an Irish attack.'<sup>429</sup> Further testament to the sentiment can be seen in correspondence from the Chief Constable of Durham Constabulary. Writing to Under Secretary Liddell, he opined that, despite their best efforts, 'no motive had been discovered.' However, he mentioned that 'at one time it was thought Fenianism, which is strong in that neighbourhood, might have had something to do with it, but nothing reliable has been obtained to support that view.'<sup>430</sup> An anonymous letter to the Home Secretary would appear to further substantiate this reported fear of Irish Nationalism in the area: 'there is an utter panic and feeling of insecurity in the neighbourhood...if ever there was a case where the law ought to take its course this is the one.'<sup>431</sup>

The anti-Irish sentiment surrounding the case is also apparent in the surviving correspondence in Home Office files. A Letter for Home Secretary, Charles Bruce, from J.W. Pease M.P. railed that 'the state of this County with regard to these bands of organized Irish Ruffians is...bad enough just now.'<sup>432</sup> Whilst one letter from an anonymous citizen, regarding reported calls for reprieves, cautioned that

'the people who are endeavouring to get the men  
reprieved are many of them of the Home Rule class. I  
therefore earnestly beg and pray that all four men may be  
hung. By granting this request you will do more to stop

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<sup>428</sup> 'The Durham Assizes', Manchester Evening News, December 7<sup>th</sup>, 1872.

<sup>429</sup> HO 144/5/18516/6.

<sup>430</sup> The Constable then went on to detail Slane's previously recorded propensity to drunken violence, acknowledging that 'he has been known to go out in the street and shout for Orangemen, Ribbonsmen or Fenians to come out and he would thrash the least man among them.' Chief Constable of County Durham to Under Secretary of State A.F.O. Liddell, 1873. HO 144/5/18516/22

<sup>431</sup> 'A loyal subject of the realm' to Home Secretary H. Bruce M.P. December 22<sup>nd</sup>, 1872. HO 144/5/18516/7

<sup>432</sup> J. W. Pease to Home Secretary C. Bruce. M.P. 30<sup>th</sup> (month unclear), 1872 HO 144/5/18516/15. In spite of his acknowledgment of violence in the Irish community Pease's letter was actually asking for a reconsideration of Beesley's sentence. Furthermore, Pease noted that 'hanging four at a time may cause some trouble as justice without mercy always does!' J.W. Pease was the sitting MP for South Durham between 1865-1885.

crime in this district than could be done by anything else'<sup>433</sup>

Even attempts years later to reprieve Beesley and Rice, whose sentences were downgraded to life imprisonment, noted that the trial had happened in a 'time of panic.'<sup>434</sup> Perhaps unsurprisingly then, John Hays appeared under no illusion as to why he was left to be hanged. Despite a restriction placed on the press attending, the following reports appeared of his last dying words.

'They swore that we were all Fenians. This is more than I know. I always loved a working man. I always did help them when they were hungry or dry. ...it went about the county in the papers that we were outraged Fenians, that is the very thing that we are going to be hung for this morning.'<sup>435</sup>

The threat of Fenianism was to play a central role in one final case in the North East in this period. In 1875, Michael Gilligan was sentenced to death for the murder of John Kilcran, a fellow Irishman.<sup>436</sup> Kilcran was set upon by a gang of men in Darlington on the evening of Sunday 28<sup>th</sup> March 1875 and reports of the crime were clear as to why. Numerous reports noted that Kilcran was the local Secretary of the Hibernian Society and that his assailants were 'known to be Fenians.' Reporting on the murder the *Northern Echo* were clear what was to blame 'the obvious inference is that we have now added to our list of local Irish party outrages another murder.' The inferences surrounding the trial were all too apparent to Gilligan. Sentenced to death he protested his innocence and stated that, 'When I was before the jury, in Darlington, the Superintendent represented it as an Irish row, and one of the jury said if he was an Irishman he should have the justice of the court.' Just as Hays before him, Gilligan believed his Irishness had played a significant part in his sentence.<sup>437</sup>

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<sup>433</sup> Anonymous to Home Secretary R.A. Cross HO 144/5/18516/9.

<sup>434</sup> C. H. Hopwood M.P. to Home Secretary, R. A. Cross. HO 144/5/18516/40.

<sup>435</sup> *Newcastle Courant*, 17<sup>th</sup> January, 1873.

<sup>436</sup> TNA DURH 15/10; HO 45/9385/46017. Gilligan stood trial with James Durkin and James Flynn both were sentenced to manslaughter.

<sup>437</sup> *Northern Echo*, April 10<sup>th</sup> 1875.

On the Sunday following Gilligan's execution, Canon Consitt who had attended the prisoner up until death, delivered an address at St Cuthbert's Roman Catholic Church in Old Elvet, a church that stood directly across the green from Durham Prison. Reports noted that Consitt's sermon was 'specially intended for the Irish portion of his flock'. The sermon, at the request of Michael Gilligan, was on the 'evils of Fenianism'. Consitt informed the congregation that on the eve of his execution Gilligan had requested the Canon to 'warn his fellow-countrymen against the dangers of Hibernian and Fenian Societies. He feared that unless they heeded his warning 'there will be a murder every year.'<sup>438</sup>

The findings here then would appear to reinforce two earlier assertions. Firstly, that Durham was far more likely to adopt the punishment of execution than its neighbouring counties, indeed as Table 2 shows, although it had a larger than average Irish population compared to the national picture, in 1871 it was nearly identical to that of Northumberland: 5.5% of the population and 5.4% respectively. In spite of this similarity Durham sentenced thirteen people to death, seven of whom were Irish, whilst Northumberland sent only two, both native North Easterners. These findings are indicative then of what Morgan and Rushton identified as 'regional variations in policy' and further establish that we cannot speak of a unified 'North-East' experience of execution; a distinction that becomes further apparent in the application of the punishment itself.<sup>439</sup> Secondly, it is evident that Durham's markedly higher incidence of capital punishment in the period may well have been owing to a localized response to the threat, perceived or real, of Irish Nationalism and the Fenian movement. In both the disproportionality high incidence of Irish men hanged and the surrounding reportage of the cases and Home Office correspondence it is clear that the nationalities and perceived political proclivities of the condemned men played a key role in their conviction. These findings therefore necessarily complicate earlier assertions of the Irish living comparatively more peaceably in the North East than elsewhere in the period.

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<sup>438</sup> *Northern Echo*, August 25<sup>th</sup>, 1875. Gilligan's execution was recently the focus of a BBC investigation in which the author contributed. *Murder, Mystery and My Family*, Series 3, Episode 9, (2019) BBC One, 5<sup>th</sup> April 2019, <https://www.bbc.co.uk/programmes/m0003w9f>.

<sup>439</sup> Morgan and Rushton, *Rogues and Thieves*, p. 73.

## Applying the Act: Confusion, contradiction and control

In the debates surrounding the enactment of private execution, considerable attention was paid to the need for outside witnesses to be admitted to the event, chiefly to mitigate against perceived public fears of the wealthy escaping punishment and to avoid the stimulation of 'morbid and superstitious feelings among the lower orders.' The presence of select members of the public and the press, it was believed, would 'provide assurance that the execution had been properly conducted.'<sup>440</sup> Testament to this public fear can be seen in the provision of a post-mortem Coroner's Inquest and requirements to publish the certificate and declaration of death 'on or near the principal entrance of the prison within which judgement of death is executed.'<sup>441</sup>

Given that these fears were so present in the debates leading up to the act, it seems all the more remarkable how ambiguous the provisions of the 1868 Act are, particularly regarding outside admission. Nowhere is this ambiguity more apparent than in the access granted to the press, indeed all admittance to the execution itself falls under section three which makes no official mention of the newspapers.

The sheriff charged with the execution, and the gaoler, chaplain, and surgeon of the prison, and such other officers of the prison as the sheriff requires, shall be present at the execution. Any justice of the peace for the county, borough, or other jurisdiction to which the prison belongs, and such relatives of the prisoner or other persons as it seems to the Sheriff or the visiting justices of the prison proper to admit within the prison for the purpose, may also be present at the execution.<sup>442</sup>

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<sup>440</sup> S. McConville, *English Local Prisons, 1860-1900: Next Only to Death* (Psychology Press, 1995), p. 410.

<sup>441</sup> Section five of the 1868 Capital Punishment Amendment Act dictated that the Coroner's Inquest was to take place within twenty-four hours of the execution and was presided over by the Coroner and a selected jury of local men. The role of the Inquest was to ascertain both the identity of the body and whether judgement of death had been 'duly executed.' Capital Punishment Amendment Act 1868.

Available online <http://www.legislation.gov.uk/ukpga/Vict/31-32/24>

<sup>442</sup> Capital Punishment Amendment Act 1868.



It appears that the ambiguous nature of the 'proper to admit' provision was open to misinterpretation by even the highest of authorities. Indeed, frequent debates in the House of Commons on capital punishment highlighted the lack of an agreed understanding of the provisions of the act itself. In 1880, twelve years after the establishment of private executions, the stringent restrictions placed on reporters at a double execution at Kirkdale prison became the focus of questions posed to the Home Secretary in the House of Commons. Originally declined access by the High Sheriff, the local Lancashire press appealed to the Home Secretary, Richard Assheton Cross, for admission. While the Home Secretary made it clear that he had discussed the matter with the High Sheriff of Lancashire he ultimately 'refused to interfere' in the matter.<sup>443</sup> It is possible that some pressure was asserted though as the Sheriff offered the newspapers a compromise: a small number could be admitted, with the proviso of numerous stringent restrictions on what could and could not be reported, chiefly relating to the criminal's behaviour and the relative success of the execution. This was a compromise too far for the newspapers who rejected the conditions and were subsequently excluded. Pressed on the matter in parliament, the Home Secretary highlighted a commonly held misconception regarding his role in determining both the administration and access to executions.

'Sir, I wish to point out that an erroneous impression appears to prevail on the part of the public on this subject. There seems to be an idea that executions are carried out by the officers of the gaol under the direction of the Home Secretary. Nothing could be more erroneous. I have nothing to do with the matter from beginning to end. The condemned man is handed over to the High Sheriff, who, by the law, is the person appointed to carry out the execution.'

The Home Secretary went on to commend the actions of the High Sheriff, arguing that in allowing access to the press but curtailing what they could report on, 'The High Sheriff in this case...did quite right.'<sup>444</sup>

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<sup>443</sup> *Sunderland Daily Echo and Shipping Gazette*, March 1<sup>st</sup>, 1880.

<sup>444</sup> HC Deb 05 March 1880 vol 251 cc431-8. Accessed April 17th, 2015

[http://hansard.millbanksystems.com/commons/1880/mar/05/capital-punishment-the-prisons-act-1868#S3V0251P0\\_18800305\\_HOC\\_25](http://hansard.millbanksystems.com/commons/1880/mar/05/capital-punishment-the-prisons-act-1868#S3V0251P0_18800305_HOC_25).

The issue arose again, seemingly unresolved, during a debate the following year over the possible abolition of capital punishment. Mr. R. N. Fowler 'heard with some surprise' Mr. J. W. Pease's, the member for Durham South, assertion that 'the press were excluded from executions, and that the admission of reporters rested with the Home Office.' His surprise was warranted as he went on to state how, he 'happened to hold the office of Sheriff of London and Middlesex, and in that capacity...he was told that the admission of reporters rested with the Sheriff' and, as such, had acted accordingly.<sup>445</sup> Pease had form with regards to the questioning of the chain of command in these matters, arguing in a debate in 1876 on the nature of magisterial power that the 'Home Secretary would be everlastingly troubled with hungry half-pay officers applying for gaol appointments.'<sup>446</sup> This suspicion was seemingly matched by Sir Edmund Du Cane's, who abhorred 'Magisterial involvement' in the running of the prisons believing 'outside bodies undermined official authority and efficiency.'<sup>447</sup>

A closer reading of the act shows where the common confusion may have arisen, as whilst it does appear to be at the Sheriff's discretion who may attend the execution, section 7 allows for intermittent intervention from Ministers of State.

'One of Her Majesty's Principal Secretaries of State shall from time to time make such rules and regulations to be observed on the execution of judgment of death in every prison as he may from time to time deem expedient for the purpose as well of guarding against any abuse in such execution as also of giving greater solemnity to the same, and of making known without the prison walls the fact that such execution is taking place.'<sup>448</sup>

The North East was not excluded from this wider confusion over where decision making power ultimately lay with regards to execution practice. Indeed, at the one execution undertaken in Newcastle during this decade, that of John William Anderson in 1876, the Clerk of the Visiting Justices wrote directly to the Home

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<sup>445</sup> HC Deb 22 June 1881 vol 262 cc1037-85. Accessed April 11th, 2018). <http://hansard.millbanksystems.com/commons/1881/jun/22/capital-punishment-abolition-bill-bill-27>.

<sup>446</sup> 3 Hansard, CCXXX, col. 900; 3 July, 1876 cited in McConville, *English Local Prisons, 1860-1900*, p. 434.

<sup>447</sup> McConville, *English Local Prisons*, p. 434.

<sup>448</sup> Capital Punishment Amendment Act 1868.

Secretary regarding section 7. A letter dated 16<sup>th</sup> December 1875, requested that the Home Secretary 'kindly furnish them with any Rule and Regulations which have been made under s7 of 31 Vict c 24.'<sup>449</sup> Newcastle were not alone in expressing a need for clarity indeed, during this period there are frequent examples of communication between the Under Sheriff and the Home Office in relation to the rules surrounding private execution. Communication was more often than not with reference to access rights to the execution and responsibilities surrounding postponement of executions. The extent to which the Sheriff and Visiting Justices had control over the execution in this period is particularly apparent in one case. In January 1874 Durham undertook a triple execution and it would appear that this remarkably rare event was actually as the result of an intervention by the Acting Under Sheriff for Durham.<sup>450</sup> Writing to the Home Secretary on 12<sup>th</sup> December 1873, he noted that Charles Dawson had just been sentenced for murder the day before and, subject to the rules would 'in ordinary course' be executed on Monday 29<sup>th</sup>. However, he detailed that 'other prisoners await their trial during the ensuing week' and he believed 'in the event of sentence of death...it is thought desirable that the several executions should be appointed to take place at one time.' As such he requested the Home Secretary's approval for the postponement of the execution. The response received stated that the 'matter is entirely in the hands of the Sheriff who must use his own discretion.' A further note was added to the effect that the Secretary of State 'sees no objection to the proposal.'<sup>451</sup> The repeated examples on visiting access and date postponement and all made clear that as far as the Home Office was concerned, the administration of execution was in the hands of the Sheriff and the Visiting Justices

### **Private punishment and the press**

In this period one area above all others dominated regional debates about who ultimately had control of the execution spectacle, namely the issue of press access.

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<sup>449</sup> Magistrates' Clerk's Office, Newcastle, to the Right Honourable R. A. Cross, Secretary of State. 16<sup>th</sup> December 1875. HO 45/9395/49945/7

<sup>450</sup> Charles Dawson, Edward Gough and William Thompson. Dawson's trial took place on the 11<sup>th</sup> December with Gough and Thompson on the 13<sup>th</sup> and 15<sup>th</sup> December respectively. TNA DURH 15/10. All were executed on the 5<sup>th</sup> January 1874.

<sup>451</sup> Acting Under Sheriff for Durham to Right Honourable R. Lowe, Secretary of State. 12<sup>th</sup> December 1873. HO 45/9354/29445/2

There was frequent discussion over the fairness and pragmatism of the rulings of the Sheriff and Visiting Justices with regards to admitting reporters to the execution. In 1878 a request was made by the Editor of the *Shields Daily Gazette*, William Duncan, to the Governor of Durham Prison. Duncan wrote that ‘there will in all probability be an execution....next week’ and he requested ‘an order to admit our reporter’ to the event.<sup>452</sup> The response he received was that the ‘Governor...is of the opinion no one will be admitted.’<sup>453</sup> The Governor’s response was arguably the result of a decade of bad experiences with the regional press following the Capital Punishment Amendment Act and as such indicative of a period in which the authorities, particularly in Durham, became increasingly unhappy with the admitted reporters’ focus on the last dying words and behaviour of the condemned and the reporting on the relative success or failure of the execution itself. Their responses to this became increasingly reactionary in the application of restrictions placed on press admission to executions. The only sop to this steady ratcheting up of control over the presentation of the spectacle being the supply of an ‘official report’, provided to the press via the Governor of the Gaol; a subject to which this chapter now turns.

In the North East, the first test of the 1868 Act came in March 1869 in what was to be a double execution at Durham.<sup>454</sup> The date of execution was set for Tuesday 23<sup>rd</sup> March and the press were granted admission with the seemingly innocuous caveat that they ‘were not allowed to see the convicts pinioned’ a restriction that the *Newcastle Courant* said was ‘very quietly submitted to.’<sup>455</sup> This ostensibly pragmatic restriction of the press from the pinioning room, the procedure often taking place in a small side room, became a feature of several executions in the region to which access had been granted. However, later reports on executions shed light on another reason why this decision may have been taken, reporting on a double execution at Durham in 1873, in which the same stipulation was placed, the *Northern Echo* reported that,

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<sup>452</sup> Copy memorandum to the Prison Commissioners from the Editor of the *Shields Daily Gazette* dated July 24<sup>th</sup>, 1878. HO 45/9463/75491/18.

<sup>453</sup> Copy Letter to the Editor of the *Shields Daily Gazette* from the Governor of Durham Prison. 23<sup>rd</sup> July, 1878 HO 45/9463/75491/18. Duncan sent this response to the Prison Commission and the reply is in line with earlier findings detailing that the matter is ‘Sheriff or the Visiting JJ of the Prison’. However, the response went on to state ‘I might empower the Visiting Committee to exercise this power of admission.’ HO 45/9463/75491/18

<sup>454</sup> John Dolan and John McConville. TNA DURH 15/9

<sup>455</sup> *Newcastle Courant*, 26<sup>th</sup> March, 1869.

‘It should not be forgotten that this is the very time when a resolute culprit, faced by the immediate preliminaries of death, will almost involuntarily yield to the dreadful feelings of the moment, and being at last convinced of the certain approach of death, will make a confession. Now, should this ever occur, how can the public, deprived of their representation by the exclusion of the press, be assured of the accuracy of any report?’<sup>456</sup>

The suggestion is borne out by several of the execution reports in the years sampled. Perhaps owing to it being the first point of recognition of one’s impending doom, the pinioning room all too frequently became the site of emotional breakdown, confession or, more troublingly, desperate pronouncements of innocence. However, in the case of Dolan and McConville’s execution in 1869, the reports carried no such record of a drama taking place, both men were reported as appearing firm and composed, McConville particularly who submitted to the pinioning, crucifix in hand and ‘prayed earnestly.’ Instead, it was the enactment of the execution itself that was to be the major talking point. At first glance all appeared to have been as desired, a swift and expedient death wherein, with their back turned to the officials and press representatives present, ‘the folding doors upon which the men were standing flew open...and the ropes straightened and tightened.’ However, after appearing ‘dead for some minutes’ a shout came out from someone attendant ‘Good God the man’s alive!’ Owing to the shortness of the rope allowed by executioner ßWilliam Calcraft, for the drop, McConville’s body ‘swung round facing the spectators writhing with convulsions from head to foot.’ The *Newcastle Courant* reported that ‘anything more frightful to witness it would be impossible to conceive.’<sup>457</sup>

Botched executions were not unknown in the North East. Indeed, executioner Thomas Askern so spectacularly botched the last public execution in the region, that his actions became the subject of questions raised to the Home Secretary George Grey in 1865.<sup>458</sup> In consequence of this, some sources believe that the Sheriff of Durham never selected Askern again, however despite his previous failings it would

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<sup>456</sup> *Northern Echo*, 25th March, 1873.

<sup>457</sup> *Newcastle Courant*, 26<sup>th</sup> March, 1869.

<sup>458</sup> HC Deb (21st March, 1865) vol. 178. cc7-8. Accessed April 19th, 2017

<http://hansard.millbanksystems.com/commons/1865/mar/21/execution-at-durham-of-matthew-atkinson>

appear that Askern had been the authorities' first choice executioner for the first private execution, but had refused the job, 'in consequence, it is said, of some intimidation arising out of the last execution at Durham, on which occasion the rope broke.'<sup>459</sup> McConville's horrific end was not the swift, seamless send-off that the authorities had required. Such intense suffering naturally lent empathy to the condemned and the errors on the day were to sow the seeds for later restrictions enforced on the press.

Four years passed following the execution of Dolan and McConville before anyone was to suffer the dread sentence of the law again in the North East. As if to compensate for the absence, at the turn of the year in 1873 four men faced execution at Durham. The planned quadruple execution would've been the first in Durham since 1785 and as such became the subject of much speculation and press coverage. However, it was to be the late, successful appeal for clemency of two of the condemned and an administrative error over the execution date that would come to dominate reports.

The execution of George Beesley, Terence Rice, John Hays and Hugh Slane was set for Monday 6<sup>th</sup> January 1873. The *Newcastle Courant* lending wholehearted support to the impending event, believing that crime in the region was so prevalent that Durham, 'required such an example as a quadruple execution to cow its lawless spirits into subjection.' However, they were to be deprived of such a grim spectacle as an appeal mounted by, amongst others, The Howard Association, successfully achieved a late commutation of the sentences of Rice and Beesley.<sup>460</sup> The last-minute nature of the decision, arriving to the Under-Sheriff on the Friday prior to the execution, caused great confusion and surprise in the papers, the *Newcastle Courant* believing the reprieves would induce 'a belief that murder is a lottery.' This was further exacerbated by a communication break down between the Under-Sheriff and executioner William Calcraft, which meant that the execution had to be postponed, owing to Calcraft being double booked for an execution in Liverpool.<sup>461</sup>

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<sup>459</sup> 'The English Hangmen 1850 – 1964', Accessed April 29th, 2018

<http://www.capitalpunishmentuk.org/hangmen.html>; *Newcastle Guardian*, 27<sup>th</sup> March, 1869.

<sup>460</sup> The Howard Associations' petition can be found in HO 144/5/18516/6

<sup>461</sup> *Newcastle Courant*, 10<sup>th</sup> January, 1873. Writing to the Home Secretary the Under Sheriff at Durham noted that having only just received a telegram from William Calcraft, stating his inability to attend, he

The result of the confusion was an angry response by the regional press, particularly relating to the administering officials, the *Newcastle Courant* stating they could not 'withhold our censure...for the misunderstanding which has prolonged the agony of the former two to another week'.<sup>462</sup>

Having previously only been shown 'meager support in this district', the unexpected delay from the postponement had the adverse effect of arousing sympathy for the two condemned men who had been denied clemency.<sup>463</sup> The *Newcastle Courant* stated in no uncertain terms that the agony caused by this administrative blunder was 'disgraceful' as it 'once more awakes in their breasts the spark of hope only to be once more cruelly extinguished.' Perhaps sensing an opportunity, The Howard Association and the condemned men's solicitor, Mr. Brignall, sent another appeal for commutation to the Home Office on the grounds that 'postponement of the execution has considerably enhanced the pain of the unfortunate men and has also raised the hopes in their breasts of the ultimate reprieve.'<sup>464</sup> So strong was this growing sentiment of a possible further commutation that even *The Times* reported that, 'a general impression prevailed in Durham...that the Royal clemency would also be extended to the two remaining convicts.'<sup>465</sup> A reprieve however was not forthcoming for Hays and Slane and on 13<sup>th</sup> January 1873 they were to face their deaths.

Despite the furore in the regional papers surrounding the late reprieves and administrative handling of the build-up to the execution, the representatives of the press were granted admission to the execution. In fact, with the exception of the one execution held in Newcastle in this period, the access they were granted was to be unprecedented, allowed as they were to attend the pinioning room; a decision the authorities would come to rue.<sup>466</sup> Seemingly in acknowledgement of this rare access, *The Northern Echo's* report of the execution carried several straplines advertising the

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"it is impossible for me to get anyone else by Monday. Under Sheriff of Durham to The Right Honourable H.C. Bruce, M.P. 3<sup>rd</sup> January, 1873. HO 144/5/18516/18. The day of execution had originally been fixed for Monday 6<sup>th</sup> January. HO 144/5/18516/3.

<sup>462</sup> *Newcastle Courant*, 10<sup>th</sup> January, 1873.

<sup>463</sup> *Northern Echo*, 10<sup>th</sup> January, 1873.

<sup>464</sup> *Newcastle Courant*, 10<sup>th</sup> January, 1873.

<sup>465</sup> *The Times*, 6<sup>th</sup> January, 1873.

<sup>466</sup> John William Anderson, executed on 22<sup>nd</sup> December, 1875. For a detailed assessment of the Anderson case and trial see H. Rutherford, 'Unity or Disunity? The Trials of a Jury R v John William Anderson: Newcastle Winter Assizes 1875' in *Union and Disunion in the Nineteenth Century* (forthcoming). I am grateful to the author here for providing me with an early copy.

content of the report, the most prominent of which was the capitalized 'STATEMENT BY HAYS IN THE PINIONING ROOM.'

Shortly before 7:30am on the Monday morning of the execution, a 'small knott (sic) of reporters and officials' were congregated outside the prison. Perhaps unsurprisingly, given previous events, the talk amongst them included the possibility 'of any extraordinary incident attending the dreadful scene.'<sup>467</sup> On the stroke of 7:30am they were all admitted into the prison and led to the office of the Prison Governor, Lieut Colonel Armstrong, for a short while until an adjournment was made to the schoolroom where the pinioning was to take place. Hays submitted to the pinioning quietly, but whilst Slane was being pinioned Hays began to address the assembled reporters. The *Newcastle Courant* reported him as saying he was 'very glad to see the reporters present, and he was happy to die. He stood there innocent of the murder of Joseph Waine.' Thanking the attendant Catholic Minister and all the presiding officials for their kindness he continued to express his innocence and said he would be 'very glad for reporters to see the paper he had left' being, as he was, 'not qualified to speak it.' His Chaplain, Canon Consitt, said he would see to it that the press received it and when Slane pushed for it to be read then and there the Canon stated, 'not at present my dear fellow, but I will take care that it is done.' Hays proceeded to continue exhorting his innocence and seemingly buoyed by Hays, Slane then 'poured out rapidly a statement of his innocence.' These recitations of innocence flew in the face of the contrite and quiet submission to the sentence by the condemned that was expected of a seamless execution.

As with the rest of the sorry affair, the execution itself did not run smoothly. Administered by Calcraft, the architect of many a botched send off, the two men were hanged on the same cross beam, Hays had been allowed a drop of about two feet and initially both appeared to have 'died almost without movement.' However, it appears that Slane's drop was slightly shorter, 'the effect of which was to spin his body round and round' Calcraft was forced to step in to steady the body which seemed to settle it, but no sooner had he achieved this, a 'slight tremor' gripped the body of Hays and then 'a quivering motion extended over all his body.' Although it

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<sup>467</sup> *Northern Echo*, 14<sup>th</sup> January 1873, p. 4.



only lasted for a matter of seconds, the *Courant* said that it 'seemed like minutes to the horror-stricken spectators.'<sup>468</sup> With that the bodies were left to hang for the requisite hour and an inquest put an end to the tragedy.

The combination of a last-minute double reprieve, administrative errors in the setting of the date and Hays' rank refusal to accept guilt all conspired to present a shambolic spectacle of justice. The *Newcastle Courant* captured the prevailing sentiment, in a piece prior to the execution, stating that whatever the outcome 'from the beginning of the tragedy at Spennymoor...to its close...England has nothing to be proud of.'<sup>469</sup> All the central elements so abhorred by the architects of the 1868 Act had been laid bare by a regional press given unprecedented and seemingly unfettered access. As a result, this was to be the last execution in Durham at which full access was granted to the press in the period and the penultimate execution to which any admittance was allowed at all.

### **The shock of a woman: Hanging Mary Ann Cotton.**

A woman being executed was a relatively rarity in England throughout the period this thesis spans, indeed Morgan and Rushton's assertion that the 'low level of female execution has been identified as a striking feature of capital punishment in eighteenth-century England' is equally, if not more so, true of the nineteenth.<sup>470</sup> Between 1800 and 1880 only four women in the North-East went to the scaffold, two of those in the 1870s. Perhaps owing to this rarity, there was considerable commentary and interest shown in female executions. One woman in particular attracted an inordinate amount of attention; Mary Ann Cotton.

On the 24<sup>th</sup> March 1873 Mary Ann Cotton became the first woman to be executed in Durham since 1799, and the first woman in the North-East since 1829.<sup>471</sup> The idea of a woman being executed in the 1870s was deeply shocking to many contemporary

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<sup>468</sup> *Newcastle Courant*, 17<sup>th</sup> January, 1873.

<sup>469</sup> *Newcastle Courant*, 10<sup>th</sup> January 1873.

<sup>470</sup> Morgan and Rushton, *Rogues and Thieves*, p. 118

<sup>471</sup> Mary Nicholson was executed in Durham on the 22<sup>nd</sup> July 1799 and Jane Jameson was hung on Newcastle Town Moor on 7<sup>th</sup> March, 1829.

commentators.<sup>472</sup> The strength of this sentiment can be seen in numerous regional publications who at once denounced her as ‘one of the vilest of human beings’ whilst simultaneously stating, ‘but she was a woman, and that circumstance alone served to call forth a certain amount of dissatisfaction with her execution.’<sup>473</sup> Similarly the *Courant*’s editorial, which accompanied Cotton’s execution report, highlighted the general approbation at the idea of a woman being hanged, ‘To take a man’s life away on the gallows is revolting enough; but humanity shudders at the very thought of a woman having thus to end her days.’<sup>474</sup>

The interest that her case garnered in the region was remarkable, as one newspaper put it, it had ‘occupied the public mind almost undividedly for the last six months.’<sup>475</sup> The *Shields Daily Gazette* noted that the vast amount of interest in the case would have ‘have brought into Durham an unparalleled number of spectators’ had the executions still been public events.<sup>476</sup> The extent to which her case was seen to be of national interest is debatable, with some claiming that media interest in the case ‘was largely regional.’<sup>477</sup> However, the combination of this widespread regional fascination and the rarity of the event, made admission to the execution a must have for many regional newspapers. This vast interest led to a hitherto unprecedented number of press representatives being admitted and owing in part to this and to what unfolded, they were to find themselves excluded from all of the remaining executions in Durham in this period.

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<sup>472</sup> Earlier studies of eighteenth-century London have noted similar revulsion towards the exclusive practice of burning women at the stake for treason. S. Devereaux, ‘The Abolition of the Burning of Women in England Reconsidered’, *Crime, History & Societies*, Vol. 9, no.2 (1st December, 2005), pp. 73–98: Although, the extent to which this growing anxiety towards physical punishment of females manifested itself in print has been questioned by Palk, who noted that ‘with a few exceptions, the executions of London women were more marked by silence than by many words.’ D. Palk, *Gender, Crime and Judicial Discretion 1780-1830*, (Suffolk: Royal Historical Society, The Boydell Press, 2006), p.128.

<sup>473</sup> *Shields Daily Gazette*, 25<sup>th</sup> March, 1873.

<sup>474</sup> *Newcastle Courant*, 28<sup>th</sup> March, 1873.

<sup>475</sup> *Shields Daily Gazette*, 25<sup>th</sup> March, 1873; It is worthy of note the extent to which Cotton’s legacy, more than any other capitally condemned victim in the North-East and arguably in the country as a whole, lives on fairly or unfairly as ‘Britain’s First Serial Killer’. ‘She Poisoned 21 People Including Her Own Mother, Children and Husbands. So Why Has No-One Heard of Britain’s FIRST Serial Killer, Mary Ann Cotton?’, *Daily Mail Online*, 5<sup>th</sup> February, 2012. Accessed April 7<sup>th</sup> 2015. <http://www.dailymail.co.uk/femail/article-2096423/Mary-Ann-Cotton--Britains-FIRST-serial-killer-poisoned-21-people-including-mother.html>

<sup>476</sup> *Shields Daily Gazette*, 24<sup>th</sup> March, 1873.

<sup>477</sup> D. Wilson, *Mary Ann Cotton: Britain’s First Female Serial Killer* (Hampshire, Waterside Press, 2013), p. 16.

In lieu of the large press presence, unprecedented precautions were put in place to moderate access, with the arrangements taking 'an unusually strict character' indeed 'great care had been exercised to prevent any newspaper obtaining more than one order of admission.'<sup>478</sup> Despite this, at 7:30am on the morning of March 24<sup>th</sup> 1873, 'members of the press, numbering twenty in all' were admitted into Durham Gaol, by the 'wicket gate.'<sup>479</sup> A press pack of this size was substantially larger than any other recorded in the region. Some light is shed on this apparent disparity in tougher restrictions and unprecedented numbers of access, in an article following an execution in 1875. Regarding restrictions placed on the press then, the *Newcastle Courant* believed the authorities to be reacting with regards to previous failings, which were of their own making due to administering passes 'not only to every newspaper office in the counties of Durham and Northumberland, but to newspapers offices in the county of York....some little disorderly crowding was the consequence.'<sup>480</sup> Given the intense interest shown by the public and evidenced in the reporting leading up to Cotton's execution, it is very likely that the authorities had to deal with unprecedented levels of request for access and as such an admission of 20 representatives would have involved as many exclusions as it did acceptances.

Slightly ahead of the attendant press pack was Calcraft, the executioner, and as they all processed to the prison, he took umbrage at the presence of the press in such great numbers and 'suddenly turned round...and in a crabbed tone of voice which sounded like the snarl of a dog, spit out the words 'Shut the door, and keep them out.' In light of his record of frequent botching, Calcraft's reticence towards the press is understandable. However, the *Northern Echo* shed further light on the extent of his bitterness citing his, 'grumbling...at the execution of the Spennymoor Murderers', (Hugh Slane & John Hays), following which he reportedly 'took occasion to complain at the numerous assemblage of representatives of the press' claiming that they 'tended to unnerve him'. The *Echo* took great delight in 'a hangman made nervous by honest men, forsooth!' Indeed, it appears that Calcraft's anger may have been the cause of a late decision to ban the press from the pinioning room, one paper reporting that not long after shutting himself in the Prison Governor's office it was

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<sup>478</sup> *Northern Echo*, 25<sup>th</sup> March, 1873.

<sup>479</sup> *Newcastle Courant*, 28<sup>th</sup> March, 1873.

<sup>480</sup> *Newcastle Courant*, 24<sup>th</sup> December, 1875.

made apparent to the attendant reporters that 'pinioning was to be performed privately.'<sup>481</sup>

The unprecedented numbers admitted to the execution may well have caused Calcraft to panic as Mary Ann Cotton's execution was to be arguably one of the most botched of any previously seen in the North East since the enactment of the 1868 Act. Calcraft was assisted by his intermittent assistant, Welshman Robert Evans and it was Evans that was to draw the bolt on the trapdoors. One paper reported that at the crucial moment, the Sheriff was so overcome with grief that he was unable to give the signal to draw the bolt, a signal he had given 'on all previous occasions' by dropping a handkerchief. Perhaps owing to this confusion, Cotton's sufferings were long and protracted, various reports mentioning how she 'commenced to struggle rather violently' and there was a noticeable 'heaving of the chest and twitching of the hands' caused by a slip of the rope.<sup>482</sup> Calcraft had to reach down and hold her by the shoulder placing pressure to enact her demise. The sight was clearly deeply affecting, 'all present were deeply moved' and in several reports the Sheriff was recorded to have 'fainted and fell into the arms of the two warders who had observed his condition.'<sup>483</sup>

### **Exclusion and Exclusivity: Secret Networks of Information.**

Following Mary Ann Cotton's execution, the press did not gain full access again for the next nine executions that were to take place at Durham Gaol. The same restrictions applied to the two executions in Morpeth and only Newcastle bucked the trend, with the single execution that took place being open to the press. It wasn't until two years after the nationalization of the prisons at the 1880 execution of William Brownlees that the press were granted admission at Durham again and even in this instance the *Shields Daily Gazette* stated that it was 'on the understanding that the reports should be as unsensational as possible' a caveat that was clearly ignored as many publications printed the horrific detail that Brownlees' neck, recovering from a

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<sup>481</sup> *Northern Echo*, 25<sup>th</sup> March, 1873.

<sup>482</sup> *Newcastle Courant*, 28<sup>th</sup> March, 1873.

<sup>483</sup> *Morpeth Herald*, 29<sup>th</sup> March, 1873. Another paper records the same incident, but had it as the Under-Sheriff, Richard Bowser *Northern Echo*, 25<sup>th</sup> March, 1873.

self-inflicted deep laceration in a desperate act of self-immolation, reopened under the force of the 'drop' at his execution.<sup>484</sup> In the intervening years a series of different restrictions placed on press access were presented from inclusion only at the post execution inquest to complete removal and reliance on an official report. The restrictions placed on the press were to be the source of contentious debate played out in the newspapers at every execution. They were also, by their very nature, indicative of a concerted effort to stop two main facets of execution reporting; a focus on the condemned's dying words and behaviour and the relative success of the execution itself.

### **'Dying Game' and other inappropriate elements.**

The importance invested in the behaviour and last dying words of the condemned in the Early Modern period has been well served in scholarly literature.<sup>485</sup> However, of the nineteenth century, the consensus has tended to be that an increasing professionalisation of reporting and the concomitant rise of the trial report led, most notably in London, to a decline in the importance invested in the final words of the condemned.<sup>486</sup> However, reports from the period sampled in the North East would appear to indicate that the behaviour and words of the condemned still resonated into the latter half of the nineteenth century. Indeed, the *Newcastle Courant's* leader column, following the region's first private execution, hoped that the Act itself would

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<sup>484</sup> *Shields Gazette and Daily Telegraph* 16<sup>th</sup> November, 1880; It wasn't just the injury to Brownlees that caused consternation, reports noted that the executioner had forgotten the cap that was to be placed over his head and as such he was left waiting on the drop until it was retrieved. An anonymous letter to the Home Office noted that 'everyone is speaking of the fearful state of unnecessary agony and suspense that the culprit was kept waiting in'. HO 144/68/98781/11.

<sup>485</sup> S. Gambrell, "If he was to be heard he had to be killed": Language from the Old Bailey to the Gallows, in *The Captivity Narrative: Enduring Shackles and Emancipating Language of Subjectivity* (Cambridge: Cambridge Scholars Press, 2011), pp. 123-38; F. E. Dolan, "Gentlemen, I Have One Thing More to Say": Women on Scaffolds in England, 1563-1680, *Modern Philology*, 92 (2) 1994, pp. 157-178; P. Lake & M. Questier, 'Agency, Appropriation and Rhetoric Under the Gallows: Puritans, Romanists and the State in Early Modern England', *Past & Present*, 153 (1) (November, 1996), pp. 64-107; J. A Sharpe, "Last Dying Speeches": Religion, Ideology and Public Execution in Seventeenth-Century England, *Past and Present*, 107 (1985), pp. 144-67.

<sup>486</sup> In these later studies, the assertion is that increasingly the condemned was presented less as a figure whose words may carry a wider truth to a watching public and more as a 'poor unhappy wretch' and conveyed to the readership as part of a frightening criminal class. A. McKenzie, 'From True Confessions to True Reporting? The Decline and Fall of the Ordinary's Account', *The London Journal*, 30 (1) (May, 2005), pp. 55-70; S. Devereaux, 'From Sessions to Newspaper? Criminal Trial Reporting, the Nature of Crime, and the London Press, 1770-1800', *The London Journal* 32 (1) (March, 2007), pp. 1-27.

put paid to the practice of dying 'hard' or 'game';<sup>487</sup> a practice by which the condemned could come to be regarded by their peers as a heroic figure and a 'species of admiration' if they refused to show fear and met their fate 'without a quiver.' The newspaper relished the fact that the new Act would rob the condemned of this power, as it was something that too often 'makes a coward appear brave when exposed to the gaze of numerous spectators.'<sup>488</sup>

However, there is a curious anomaly in the *Newcastle Courant's* stance, shared by many papers in the region, with regards to the practice of dying 'hard' or 'game.' On the one hand they applauded its apparent demise, through the establishment of private executions, but on the other they demanded access to it, when it was being increasingly restricted. The *Newcastle Daily Chronicle*, eight years later, expressed a similar sentiment believing that 'the substantial justice of a sentence is not at all affected by the confessions of a criminal' continuing, with hypocrisy characteristic of most papers on this subject, to lament the fascination in 'the last utterances of felons' seemingly oblivious to their role in frequently printing them.'<sup>489</sup> Given the high-minded proselytizing of these editorials, it would seem logical that the same newspapers would have happily complied with this omission from their reports, but all too frequently the refusal to gain access to the last dying moments of the condemned is the major point of contention in the newspaper reports of the condemned. Indeed, in their attempts to report it, whatever the restrictions in place, the paper arguably went some way to prolonging the practice. This journalistic trait of increasing 'identification with the condemned' illustrated by the importance placed on their behaviour from the point of trial to the moment of death, was not exclusive to the North East. In his work on Lincolnshire execution reports, Tulloch noted the phenomenon and the problem it brought for authorities as being traceable 'across Europe.'<sup>490</sup>

### **A spectacle viewed 'solely by the officials'; The rise of the official report**

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<sup>487</sup> For a detailed discussion of the notions of dying 'game' or 'hard' see A. McKenzie, 'Martyrs in Low Life? Dying 'Game' in Augustan England,' *The Journal of British Studies*, 42 (2) (April 2003), p. 167–205; A. McKenzie, *Tyburn's Martyrs: Execution in England, 1675-1775*, (London: New York: Hambledon Continuum, 2007).

<sup>488</sup> *Newcastle Courant*, 26<sup>th</sup> March, 1869.

<sup>489</sup> *Newcastle Daily Chronicle*, 23<sup>rd</sup> December, 1875.

<sup>490</sup> Tulloch, 'The Privatising of Pain,' p. 440.

Following the execution of Mary Ann Cotton the press had to wait nine months until another execution. Scheduled to take place at Durham Gaol on 5<sup>th</sup> January 1874, this was to be the first triple execution in the North-East since 1792, in which year there were two (one in Morpeth and the other in Newcastle). In Durham the gap was even more pronounced, the last instance of three or more people falling victim to the scaffold being in 1785.<sup>491</sup> Given the detailed failing of previous executions and perhaps sensing the additional interest surrounding such a rare event as a triple hanging, access was denied to representatives of the press. As such these were to be the first executions in the North East to be witnessed 'solely by the officials.'<sup>492</sup> There is a slight disparity in the reporting of access granted, most of the regional publications appearing to suggest that the press were completely excluded, but rather erroneously the *Guernsey Star* reports on the execution and suggests that the reporters were later admitted 'at the formal inquest' which began at 10am, two hours after the execution itself.<sup>493</sup> Either way, it is clear that no representatives of the press saw the act of execution itself. Reporting on the decision to not admit the press, the *Shields Daily Gazette* claimed that it 'has given rise to a feeling of surprise, and the public of the Cathedral City condemn, and in strong language too, the procedure of the Visiting Justices.' Such was the paper's anger at the decision that they concluded their statement by printing an exhaustive list of names of those involved in making the decision as something that they rather ominously stated, 'may be interesting to our readers to be acquainted with.'

One of the key bones of contention regarding the decision was that it was deemed to have little precedent elsewhere, one newspaper claiming that the visiting justices had 'put a construction on an Act of Parliament previously unknown (except in one solitary instance in Ireland).'<sup>494</sup> This feeling of being uniquely excluded in this region

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<sup>491</sup> On the 10<sup>th</sup> August, 1792 Jane Clarke, Eleanor Clarke and William Clarke were executed at Newcastle's Westgate. Twelve days later Sylvester Broadwater, Joseph Marshall and Christopher Taylor met a similar fate at Morpeth. While, in Durham, William Hamilton, Isabella Hamilton, Thomas Elliot and Duncan Wright were hung together on the 1<sup>st</sup> August, 1785.

<sup>492</sup> *Morpeth Herald*, 10<sup>th</sup> January, 1874.

<sup>493</sup> *The Guernsey Star*, 6<sup>th</sup> January, 1874 p.2.

<sup>494</sup> *Shields Gazette and Daily Telegraph*, 5<sup>th</sup> January, 1874.; Previous studies have noted distinctions of application in execution in Ireland notably in November 1785, when Dublin officials bowed to the pressure of local inhabitants to move executions out of the street and inside the prison courtyard, but returned them outside the walls a year later for fear of critically reducing the ritual's deterrent effects

was to become a feature of later executions, with comparisons with London often being made as a place far more accommodating of the press and public in general. At the concurrent executions of John William Anderson and Richard Charlton in 1875, in Newcastle and Morpeth respectively, differing access arrangements led one newspaper to make direct comparison with the practice undertaken in the capital city. The day prior to Anderson's execution, Henry Wainwright had been hanged in London with both the press and select members of the public allowed access. In reference to this the *Newcastle Courant* called for a 'medium in all things' between Charlton's execution where the press and public were entirely restricted and the procedures undertaken in London.<sup>495</sup> In the case of Charlton's execution, the newspaper believed that the restrictions were an aberration of the intentions of the what they termed the Private Executions Act.

Starved of access to the execution spectacle, the region's reporters were increasingly reliant on a report provided by one of the officials present, usually either the Prison Governor or the Sheriff. This was neither satisfactory to the reporters present or, it would appear, to the wider public. The extent to which the official reports provided were trusted by the press and, more specifically, the wider public can be seen in a letter, published in the *Newcastle Courant*, from a juryman present at a triple execution in Durham in January 1874. Writing with regards to the exclusion of the press the anonymous juryman stated that the decision was 'inadvisable' as 'the public believe more in the disinterested and unbiased opinions and reports of the public press than they do in a purely official report, when it is not capable of contradiction.'<sup>496</sup> The contradiction alluded to is made clear later in the letter as, having himself been privy to an examination of the bodies of the condemned after execution, he found the countenances of Thompson and Gough 'placid' but when it came to Charles Dawson 'the man, from his appearance, must have suffered a deplorable death.'<sup>497</sup> This ran contrary to many regional and even national reports,

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B. Henry, *Dublin Hanged: Crime, Law Enforcement and Punishment in Late Eighteenth-Century Dublin* (Dublin, 1994), pp. 31-32.

<sup>495</sup> It is worthy of note that Henry Wainwright's execution report in the *Alnwick Mercury* took up more space than the combined reports of Anderson and Charlton's execution *Alnwick Mercury*, 25<sup>th</sup> December, 1875. The *Morpeth Herald* carried the additional macabre detailed that at the inquest following Anderson's execution Marwood produced the rope used and 'it was the same rope by which Wainwright was hung.' *Morpeth Herald*, 25<sup>th</sup> Dec 1875.

<sup>496</sup> *Newcastle Courant*, 16<sup>th</sup> January, 1874.

<sup>497</sup> *Newcastle Courant*, 16<sup>th</sup> January, 1874.



which stated that Dawson and Gough died ‘almost immediately’, instead reporting that Thompson had ‘suffered severely.’<sup>498</sup> Whose report was more accurate is less the issue at point here: what was of relevance was the extent to which execution reports were trusted, once the press had been removed.

To mitigate against the new restrictions on access, the reporters became increasingly reliant on a network of anonymous informers from inside the execution itself. Given the surreptitious and obviously undocumented nature of these transactions, they are impossible to categorically verify, but it is clear in certain instances that reporters were gaining insider information, most often it would appear from low level prison officials. In a prescient move at the first execution from which the press were removed the authorities, according to the *Newcastle Courant*, had deemed that ‘even the prison warders and other prison officials not on duty, who have been in the habit of looking on at former executions, were rigidly excluded upon the present occasion.’<sup>499</sup> It would seem that the authorities were only too aware how, in light of the press restriction, reporters would be eager to glean anything additional or contrary to the official line the authorities would present. Indeed, in numerous reports of Durham executions in this period, the hangman William Marwood was often reported as to be found in the Dun Cow Inn, a few hundred yards from Durham Gaol, in the lead up to an execution. As late as 1880, reporting on the impending execution of William Brownlees, one paper detailed a conversation in the pub,

‘He is a pleasant man in company this executioner- nothing morose or gloomy about him- and quite the antithesis of the typical hangman...his conversation on such occasions naturally abounds with incident...of crimes and criminals. Like a sensible man, however, he knows how far to go...should an inquisitive admirer put an injudicious question he is at once reminded that the individual spoken to is a Crown Officer.’<sup>500</sup>

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<sup>498</sup> *The Times*, 6<sup>th</sup> January, 1874.

<sup>499</sup> *Newcastle Courant*, 9<sup>th</sup> January, 1874.

<sup>500</sup> Indications of what may have been deemed acceptable to divulge are highlighted later in the same report, which went on to state that Marwood was happily discussing the ‘dodging tricks’ of Charles ‘Charley’ Peace (a notorious cat burglar hung the year before) prior to his execution. Marwood believed his request for a glass of water and statements that the rope was too tight were attempts to hold off the proceedings hoping ‘something favourable might turn up.’ *Shields Daily Gazette*, 16<sup>th</sup> November, 1880; Previous scholarly work on William Marwood has noted what some contemporary reporters called his ‘morbid vanity’ that led his self-styling as the holder of a ‘Crown Office’. A behaviour that Smith has argued ‘contributed to the popular misconception that Marwood was indeed

At the execution of Hugh Daley on the 29<sup>th</sup> December 1874, the *Newcastle Courant* reported that not only were the press excluded, but the prison warders were under 'strict orders...at the risk of a severe penalty' not to divulge anything relating to the 'conduct of the culprit...or the execution to anyone outside of the prison.'<sup>501</sup> The warning at first appeared to have been heeded, the *Sunderland Echo* reporting that the warders quickly hurried into the gaol 'especially avoiding the reporters, apparently fearful of giving a 'hinge to hang a loop upon.' The newspaper reported that despite 'all the efforts of some half-dozen reporters this morning, not one of them was able to obtain any reliable information as to the events immediately preceding the last act.'<sup>502</sup> It would appear however, as with the last execution, that the threat to the warders had not been threat enough to deter some from divulging information about the execution itself.

Printed four days after the *Shields Daily Gazette*, the *Newcastle Courant's* execution report mentioned that the event was attended by around a hundred people directly outside of the gates and 'a dozen on the hill adjoining the race course,' a vantage point, from which several of them declared they 'distinctly heard the heavy thud of the rope and...a hasty movement to the scaffold as if something unusual had happened.'<sup>503</sup> While there is a possibility that the thud was heard, the *Sunderland Echo's* earlier report pours scorn on the idea that spectators on the hill would have seen anything, due to a 'thick floating mist' that 'hid the prison walls.' Although it did concede that there may have been one exception in the form of a 'gentleman perched high above his fellows, opera-glasses in hand.'<sup>504</sup> Witnessed or not, *The Courant* reported that from this information, a rumour 'gradually spread' that the execution had been botched. The paper appears to give tacit confirmation to the legitimacy of the rumour stating that, 'in the course of a few minutes it was mentioned by a reliable authority that there had been a painful scene.' Whether this 'reliable authority' was a warder we cannot be certain, but it is clear that information

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the holder of some permanent, government post.' T. Smith, 'I Could Hang Anything You Can Bring Before Me': England's Willing Executioners in 1883' in S. Devereaux & P. Griffiths (eds.) *Penal Practice and Culture, 1500–1900*, (Palgrave Macmillan, 2004). p. 288.

<sup>501</sup> *Newcastle Courant*, January 1<sup>st</sup>, 1875.

<sup>502</sup> *Sunderland Daily Echo*, 28<sup>th</sup> Dec, 1874.

<sup>503</sup> *Newcastle Courant*, 1<sup>st</sup> January, 1875.

<sup>504</sup> *Sunderland Daily Echo*, 28<sup>th</sup> Dec, 1874.

leaked, as what followed was a detailed description of Daley's last moments in which 'either through mental terror or physical prostration his limbs seemed unable to carry him' on approach to the scaffold. Daley was reported to have been carried to the scaffold by two warders on the instructions of the Governor. One member of the execution party who categorically did not provide any insider information was the Chaplain, the *Courant* stating that he was waited upon at the end of the execution for further information, but was 'so prostrate with the sad office he had just performed that he was unable to comply with a request sent to him to throw some further light on the sad affair.' The extremes of his grief may well have been occasioned by what appears to be a particularly harrowing detail that emerged in the *Courant's* report, in which they reported that at the point of Daley's execution 'it is even said that it is with some difficulty that Canon Consitt could get away from him.'<sup>505</sup>

The ban on press admission stayed in place for the next execution in the North-East, which was that of William McHugh, Michael Gilligan and Elizabeth Pearson on 2<sup>nd</sup> August 1875.<sup>506</sup> The twin draws of a second triple execution in as many years and a woman amongst the condemned undoubtedly sparked much interest amongst the press and wider public.<sup>507</sup> Indeed, most reports indicate that the interest was far from a purely regional thing. On attempting to enter the prison, Deputy Governor Mr. Young was approached by two Spanish journalists visiting England who were desirous to witness the English mode of execution as they had previously 'seen criminals executed in Spain and guillotined in France.'<sup>508</sup> and were 'under the impression that as journalists they would be admitted.'<sup>509</sup> Despite their efforts and the novelty of their origin, Deputy Young informed them that 'as a matter of course all representatives of the press were excluded.'<sup>510</sup>

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<sup>505</sup> *Newcastle Courant*, 1<sup>st</sup> January, 1875.

<sup>506</sup> DURH 15/10. Michael Gilligan HO 45/9385/46017, William McHugh HO 45/9386/46145, Elizabeth Pearson HO 45/9386/46018.

<sup>507</sup> Further complication was added in the case of Elizabeth Pearson as she claimed to be 'with child'. A telegram was sent from the Governor of Durham Prison to the Home Office to detail that a medical examination had taken place and she had been found to not be pregnant. HO 45/9386/46018/11 Testament to the seriousness with which the claim was dealt can be seen in a Home Office telegram sent requesting a second opinion, noting 'expenses will be reimbursed.' The second opinion was provided by Mr. Jepson an 'experienced Medical Officer' at a cost of £2 2s 0d. He also found no evidence of pregnancy. HO 45/9386/46018/13

<sup>508</sup> *Newcastle Courant*, 6<sup>th</sup> August, 1875.

<sup>509</sup> *Shields Daily Gazette and Telegraph*, 3<sup>rd</sup> August, 1875.

<sup>510</sup> Further testament to the draw of the event, was the size of the crowd outside the prison gates, reported to be 'more than had ever been seen since private executions were instituted.' Even so, it is

Whilst excluded from the execution itself, the *Shields Daily Gazette* noted that reporters were 'subsequently admitted' to the inquest, an access that appears to have been extended to the two Spanish journalists also attendant.<sup>511</sup> The inquest that followed the triple execution of McHugh, Gilligan and Pearson was a perfect microcosm of the competing notions of what was deemed the appropriate or required information for an execution report, played out between the jurymen and the Under-Sheriff and foreman. *The Shields Daily Gazette* reported that the jurymen at the inquest asked,

Mr. G. Ridley (jurymen): Did they struggle much?

Mr. Peele (Under- Sheriff): Not at all.

Mr. Williams: (jurymen): Did they make any confession?

Mr. Peele (Under- Sheriff): I am not at liberty to say anything about that.

The Foreman: That is a thing we have nothing to do with.

Mr. Brown (jurymen): Did they make any statement on the scaffold?

Mr. Peele: That I cannot tell you, Mr. Brown.<sup>512</sup>

The statements of Under-Sheriff Peele were indicative of an increasingly stage managed and controlled event in which *small details*, like the desperate recitation of one's innocence, were deemed inconsequential and unworthy of record or report to anyone outside of the immediate execution. The fact that the *Shields Daily Gazette*, much to the chagrin of the authorities, carried a detailed portrayal of McHugh's last words and behaviour serves to illustrate two things. Firstly, despite their myriad efforts, it appears that even at the apogee of this system of controlled access, information slipped out from behind the prison gates. Secondly, it is indicative of what the paper deemed essential information for its reading public.

### **An execution in Newcastle and Morpeth.**

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worth noting that estimates on crowd numbers were, at most, 300 – a stark contrast to the tens of thousands reported in instances up until the instigation of the 1868 Act. As with the previous execution in the region, a number of persons congregated on the 'hill opposite' the gaol, a vantage point from which they claimed to have seen 'part of the sad procession.' *Newcastle Courant*, 6<sup>th</sup> August, 1875.

<sup>511</sup> *Shields Daily Gazette and Telegraph*, 3<sup>rd</sup> August, 1875.

<sup>512</sup> *Shields Daily Gazette*, 3<sup>rd</sup> August, 1875.

The extent to which the visiting justices had increasingly restricted access to executions in Durham became a talking point in the regional papers at the first executions in the North-East, outside of Durham since the 1868 Act: those of John William Anderson and Richard Charlton in 1876. Hanged on consecutive days in December, the former in Newcastle and the latter in Morpeth, both had entirely different access granted which led to various papers offering a summation and critique of why this may have been and on the practice of restriction more generally. Commenting on the execution in Newcastle, the *Newcastle Courant* stated that, 'none of the general public were admitted' but the press were 'to the extent of one from each of the Newcastle papers' this meant that all told, 'fifteen persons' were attendant at the execution. The paper believed, as mentioned earlier in the chapter, that in refusing public admission and limiting newspaper access, the authorities 'took their cue' from earlier poorly managed executions at Durham that had been the sites of 'unseemly' behaviour.<sup>513</sup>

The access that was granted to the few press admitted at John William Anderson's execution appears to have been completely unrestrained, including admission to the pinioning room; an area frequently subject to restricted access in Durham. The *Morpeth Herald* further reported that the Sheriff, Under-Sheriff and Governor of the Prison were 'most courteous in affording the representatives of the press all the information they wanted.'<sup>514</sup> Interestingly, the reports of John William Anderson's execution carry none of the traditionally salacious elements, by all accounts he died stoically and silently. The *Newcastle Courant*, referencing his previous career as a Private in the 98<sup>th</sup> Regiment, noted how, when on the scaffold, Anderson was 'Standing firmly erect as if on parade' and 'faced his doom with a composure which, on any other occasion, would have provoked admiration.'<sup>515</sup> Similarly the *Morpeth Herald* recorded that 'he seemed to realize his awful position, and to do what he said he would do – to die bravely.'<sup>516</sup> Even the description of the hanging itself is muted; numerous reports mention that 'about two minutes' elapsed between the 'drop' and Anderson's eventual death, a length of time that in previous instances would have

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<sup>513</sup> *Newcastle Courant*, 24<sup>th</sup> December, 1875.

<sup>514</sup> *Morpeth Herald*, 25<sup>th</sup> Dec 1875.

<sup>515</sup> *Newcastle Courant*, 24<sup>th</sup> December, 1875.

<sup>516</sup> *Morpeth Herald* 25<sup>th</sup> Dec 1875.

been considered a source of contentious debate, but despite this, judgement is not passed on the relative success of the procedure itself.<sup>517</sup>

In stark contrast to Anderson's execution, Richard Charlton's in Morpeth the following day was not open to the press in any form and additional hitherto unprecedented steps were taken to increase the privacy of the drama itself. Charlton's was to be the first execution in Morpeth for 28 years, when George Matthews and James Welch had hanged for murder on March 17<sup>th</sup> 1847, and perhaps owing to the infrequency of such an event the Town Council decided to make it pass by with as little notice as possible. By order of the Mayor, the customary bell toll, a quarter of an hour before and after each execution, was silenced. In a letter to the Governor of Morpeth Gaol, published alongside the *Morpeth Herald's* execution report, the Mayor made clear that the decision had been decided upon, as a bell 'at such an early hour, and upon so melancholy an occasion, would tend to shock the feelings of the community, and do much harm to delicate and nervous people.' The newspaper added that this step had 'met with the approval of the townspeople generally.'<sup>518</sup> Charlton had indeed aroused 'considerable sympathy' amongst the people of his home town, Dinnington, largely owing to the fact that after shooting his wife he had attempted to shoot himself, but been unsuccessful, the bullet lodging in his brain.<sup>519</sup> Indeed, a request had been sent to the Home Secretary for a commutation of his sentence, which the *Newcastle Daily Chronicle* said was signed by 'nearly every inhabitant of Dinnington and the county for many miles around.'<sup>520</sup>

However, one element of the increased privacy that did not meet general approval at Charlton's execution was the decision to exclude the representatives of the press. The *Morpeth Herald* lamented the decision and argued that Morpeth and Durham were 'quiet alone, in not affording such information and facilities to reports as they

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<sup>517</sup> *Newcastle Courant*, 24<sup>th</sup> December, 1875.

<sup>518</sup> *Morpeth Herald*, 25<sup>th</sup> December, 1875.

<sup>519</sup> After shooting his wife Charlton had turned the gun on himself. The resulting injuries were the subject of a number of petitions for a sentence commutation in Charlton's Home Office file. Indeed, the surgeon of Morpeth prison put in a request to examine Charlton's head after execution as he believed 'the bullet is still lodged in the brain.' Mr M. Brummell, Surgeon of Morpeth Prison, to Secretary of State for the Home Office Department, December 13<sup>th</sup>, 1875. HO 45/9395/49947/10

<sup>520</sup> *Newcastle Daily Chronicle*, 24<sup>th</sup> December, 1875.

may require.’ Their fear was that the admission of the press at executions was now entirely in the hands of the ‘great unpaid’ and they believed that if the practice was taken up more widely across the country, a ‘change would speedily be made in law’ to prevent it.<sup>521</sup> Despite the approbation, the restriction at first appears to have achieved the desired result, with both the *Newcastle Courant* and *Morpeth Herald* stating that Charlton made no statement and died swiftly with no apparent botching. However, the *Newcastle Courant* bemoaned that, owing to the press restrictions, ‘all sorts of rumours were afloat’ about Charlton’s last days and dying behaviour a fact that the paper believed was the logical result of the enactment of an execution which, ‘could not be vouched for by the public press of the district.’ The extent to which the press had become routinely excluded from the execution was deemed by the *Newcastle Courant* a ‘mistake.’<sup>522</sup>

It is unclear the extent to which the authorities acknowledged the newspapers’ ire at their exclusion from Charlton’s execution. Despite a 28 year gap in executions prior to Charlton’s, just three months following his demise, another man awaited the same grim fate at Morpeth.<sup>523</sup> The closeness of Hunter’s deed to Charlton’s elicited little sympathy from the papers, indeed the *Newcastle Courant* that had, on the instance of Charlton’s execution, called for the demise of the death penalty now coldly stated that, ‘Hunter should have remembered the fate of Charlton, who was hanged only a month or two ago.’<sup>524</sup> As in other instances the level of access that the press were granted is slightly unclear, although they were almost certainly uniformly declined admittance. Perhaps in light of the anger caused by the decision surrounding Charlton’s execution, the Visiting Justices who met the Tuesday prior to the execution ‘made no order on the subject, leaving the ordinary prison regulations to

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<sup>521</sup> *Morpeth Herald*, December 25<sup>th</sup> 1875. This charge against unnecessary power being in the hands of local administrative officials, appeared in a similar guise at the earlier noted House of Commons debate in 1880 on the press access to executions at Kirkdale Gaol in 1880. Questioning the Home Secretary, famed parliamentary orator John Bright, MP for Birmingham, stated that ‘the present system is one which is outraging the feelings of the public’ giving as it does the right for a High Sheriff to ‘exercise his private judgement as he please’ when Sheriffs in his experience were not ‘generally speaking, men of experience.’ HC Deb 05 March 1880 vol 251 cc431-8.

<sup>522</sup> *Newcastle Courant*, 24<sup>th</sup> December, 1875

<sup>523</sup> Astonishingly, the man facing execution, George Hunter, had signed a petition for the commutation of Charlton’s sentence mere moments before he himself went on to shoot a man, thus condemning himself to death. *Newcastle Courant*, 31<sup>st</sup> March, 1876.

<sup>524</sup> *Newcastle Courant*, 31<sup>st</sup> December, 1876.

determine the question of who shall not be admitted.<sup>525</sup> In their execution reports the *Newcastle Courant* and *The Times* both failed to mention whether the press were admitted or not, but the *Morpeth Herald* states that 'although no express order was made...matters were so managed that no reporters were admitted.' As had been the case with the restrictions placed on Charlton's execution, the paper noted that, as a consequence, rumours were afoot about the execution having been bungled to the extent that one of the persons there present had fainted. The veracity of this claim could not be established by the paper, which admitted that 'whether this is true we know not.'<sup>526</sup> Whether an official fainted is unclear, but the precedence from Mary Ann Cotton's execution would have meant it might well have been widely believed. One thing that is abundantly clear in this admission of ignorance on the matter by the newspapers, is the extent to which regional reporters were now hidebound by the official report, whilst being deeply distrustful of it. This created a strange hinterland where the papers were at once presenting a true and accurate portrayal of the execution and on the other openly questioning its veracity.

The clearest acknowledgement of an official report becoming the *de facto* practice for execution reports is instanced in the penultimate execution in the years sampled: that of John Williams on the 26<sup>th</sup> July 1876. Executed at Durham for the murder of his brother in law, John Wales, Williams was to die without any members of the public or press present, although certain reports say his wife and brother were present at the inquest after and 'viewed the body...as it lay in the coffin' an admission that appears fairly unique in the region, in the period sampled.<sup>527</sup> The decision over press admission was taken at a meeting of the Visiting Justices, a week prior to the event during which it was agreed that the press should be excluded and 'an official report should be furnished after the execution.' The ruling was the main subject of the questions raised by jurymen at the inquest, immediately following

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<sup>525</sup> *Newcastle Courant*, 24<sup>th</sup> December, 1876.

<sup>526</sup> *Morpeth Herald*, 1<sup>st</sup> April, 1876.

<sup>527</sup> Of the period covered in this region there appears to be no instance in which the family of the condemned were permitted to witness the execution. Although it is clear from later correspondence from the Prison Commission that it was perfectly permissible and one of the powers of the Visiting Justices. Testament to this can be seen in a request made at the 1878 hanging of Robert Vest for admission of a family member. The response from the Prison Commission included a Standing Order from the Home Office detailing that 'any of the relatives of the condemned prisoner, who shall be furnished by a member of the Visiting Committee with an order, are to be permitted to be present at the execution.' HO 45/9463/75491/19



the execution. Addressing the Acting Deputy Governor, Mr. Thompson Smith, Juryman Mr. Ellison asked: 'Can you inform us the reason why members of the press were not allowed to be present...reporters are allowed to be present in London and other places.' In response the Coroner present made it clear that it was not their remit to decide, or anyone's there present, claiming it to be a matter for 'the Visiting Justices' and when pushed further he replied, that 'the Sheriff was the proper one to speak to in reference to the admittance of reporters.'<sup>528</sup> Following the decision, the regional newspapers' coverage of the event was based on the 'official report of the execution, given to the members of the press by Mr. Thompson Smith, acting deputy governor the gaol.' The *Newcastle Courant* and *Northern Echo* both reported with marked similarity that Williams had an 'instantaneous death.'<sup>529</sup> The seamless professionalism conveyed seems questionable by its convenience.

## Conclusion

In one sense the arguments presented in this chapter cannot claim to be representative of a wider pattern across England and Wales, being as they are so tightly focused on one region. Indeed, in the few reported instances of comparison with London executions it is noted the extent to which press and selected public access was far more forthcoming in the capital. To this extent further study of the application of the 1868 act across the country is needed if we are to get a truly insightful picture of both the intentions of the act itself and the wider practical reality of its application. However, several findings are apparent.

Firstly, the clear disparity in this period between Newcastle, Northumberland and Durham in both the incidence and application of capital punishment is further testimony to the marked differences in the provision of punishment in the North East highlighted in chapter two. Secondly, it is apparent that responses to crime differed greatly and were more often than not reactive to local circumstance. In this period, in Durham, it is clear that the authorities were responding in large part to perceived threats of violence and crime in the Irish community. This was in large part driven by

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<sup>528</sup> *Newcastle Courant*, 28<sup>th</sup> July, 1876.

<sup>529</sup> *Northern Echo* 27<sup>th</sup> July, 1876.

a wider national 'Fenian panic', a finding that brings in to sharp relief earlier scholarly assertions that the Irish in this period were particularly welcome in the North East. Furthermore, it is clear that ambiguities inherent in the 1868 Capital Punishment Amendment Act created confusion regarding where responsibility ultimately lay in the presentation and enactment of executions. Far from a uniformity of approach this allowed, particularly in Durham, elements of the act to be applied in dramatically different ways. In this sense then we see an era of punishment as much dictated by local concerns over central control.

Secondly in response to these restrictions, North East newspapers, reporters and their readers felt that a key element of the execution spectacle had been denied to them; the public witness. This has implications for previous assessments in which the last dying words of the condemned no longer carried the same importance. The response to the Sheriff and visiting justices' complete refusal to admit a sample of the public and more often than not the press, can be seen in the press's frequent refutations and questioning of the decisions and to a lesser extent the wider public's opprobrium witnessed through letters of complaint and the prism of the press. In their unrestrained reporting of the various administrative and practical blunders that had coloured the earliest executions in the aftermath of the act, the press were routinely refusing to play the role expected of them by the authorities. As Tulloch has argued of the Lincolnshire press, their refusal to follow the 'truncated and sanitised narrative' provided by the Governor and attendant representatives, put them increasingly at odds with the very people who held the key to their admittance.<sup>530</sup> As such, they found themselves increasingly restricted from official access and blocked from using traditional insider sources, to the point where they became almost entirely reliant on the official report provided by the administering officials. Perhaps the truest element of any report following the press's exclusion is to be found in the *Newcastle Courant's* coverage of Hugh Daley's execution in 1874, the first at which the press were not admitted. Responding to popular conjecture on Daley's last moments, in which many believe his courage failed him the *Newcastle Courant* stated, 'what took place during the march to the fatal beam must remain a secret to the dozen persons who witnessed it.'<sup>531</sup>

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<sup>530</sup> Tulloch, 'The Privatising of Pain', p. 449.

<sup>531</sup> *Newcastle Courant*, 1<sup>st</sup> January, 1875.

Finally, what do these findings then mean in the wider history of penal change. As with chapter two, what is clear is that there is no one simple picture of unified change. Indeed, neighbouring counties experienced dramatically differing incidences of execution and took widely differing approaches to how the spectacle was undertaken and presented. Foucauldian claims that the state increasingly ‘no longer touched the body’ and when it did it was purely ‘to reach something other than the body itself’ may, in a limited way, be applicable in Newcastle and Northumberland’s minimal application of execution, but appear way wide of the mark in Durham.<sup>532</sup> Similarly, histories that acknowledge the adoption of the 1868 Act as part of a wider ‘civilizing’ movement, driven by an enlightened move away from the more brutalising physical punishments, must acknowledge that far from leading to its steady removal from the penal arsenal, in some senses the 1868 Act actually gave capital punishment a renewed vigour. Increasingly concealed from the public and press scrutiny the authorities, most notably in Durham, were able to oversee a dramatic increase in executions largely unchecked. Perhaps then we are better placed to look to the more cynically revisionist histories of the 1868 Act, most notably McGowen’s in which he contended that far from removing the punishment from the legislative arsenal ‘privacy... permitted the preservation of punishment.’<sup>533</sup>

In attempting to control the presentation of the spectacle of execution to a wider public, the authorities increasingly sort to hide two key elements; the condemned’s final words and the relative success of the hideous act itself. This move towards tighter control of the administration and a uniformisation of capital punishment and the dissemination of its message can be seen in the 1877 Prison Act, a piece of legislation which McConville has argued made ‘the efficiency and decorum with which executions were conducted... an ever pressing concern for central government.’<sup>534</sup> There is a certain tragic irony in all these actions, namely that the most memorably botched execution in the North East, occurred in 1883, five short years after the transfer to national control. Ironically, the press were present, the Prison Governor noting in a letter to the Home Office that “the reporters were only

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<sup>532</sup> Foucault, *Discipline and Punish*, p. xxx

<sup>533</sup> McGowen, p. 282.

<sup>534</sup> McConville, *English Local Prisons*, p. 409.

sixteen yards from the drop and had a full view of it.<sup>535</sup> James Burton's gruesome demise, the rope slipped under his elbow requiring him to be 'hailed up and hanged all over again', became the subject of questions in the House of Commons that would ultimately lead to the retirement of executioner William Marwood and a recommendation by the Aberdare Committee three years later for executioners to coil up any free hanging rope.<sup>536</sup>

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<sup>535</sup> Copy report from Governor Durham Prison, dated 8<sup>th</sup> August, 1883. HO144/121/A29977/13

<sup>536</sup> Gatrell, *The Hanging Tree*, p. 590; The Aberdare Committee report of 1888 noted that 'Until very recently it was the custom to allow the slack of the rope to hang freely down the culprit's back. In this manner a bight was formed, and if there was any movement by the culprit at the moment of drawing the bolt, his elbow or wrist was liable to be caught in his fall. Instances of this having occurred involving failure in carrying out the execution in a proper manner were brought to our notice. It is now well recognised, however, that the slack of the rope can, by means of a pack thread, be secured in a loop well above the head of the culprit; the pack thread breaking with ease on the fall taking place, and allowing the rope to fulfil its function.' *Report of the Committee appointed to inquire into the Existing Practice as to carrying out of Sentences of Death, and the Causes which in several recent Cases have led either to failure or to unseemly occurrences; and to consider and report what arrangements may be adopted (without altering the existing Law) to ensure that all Executions may be carried out in a becoming manner without risk of failure or miscarriage in any respect.* (London: HMSO Eyre and Spottiswode, 1888). Accessed 17<sup>th</sup> January, 2018  
<http://www.capitalpunishmentuk.org/Aberdare%20Report.pdf>

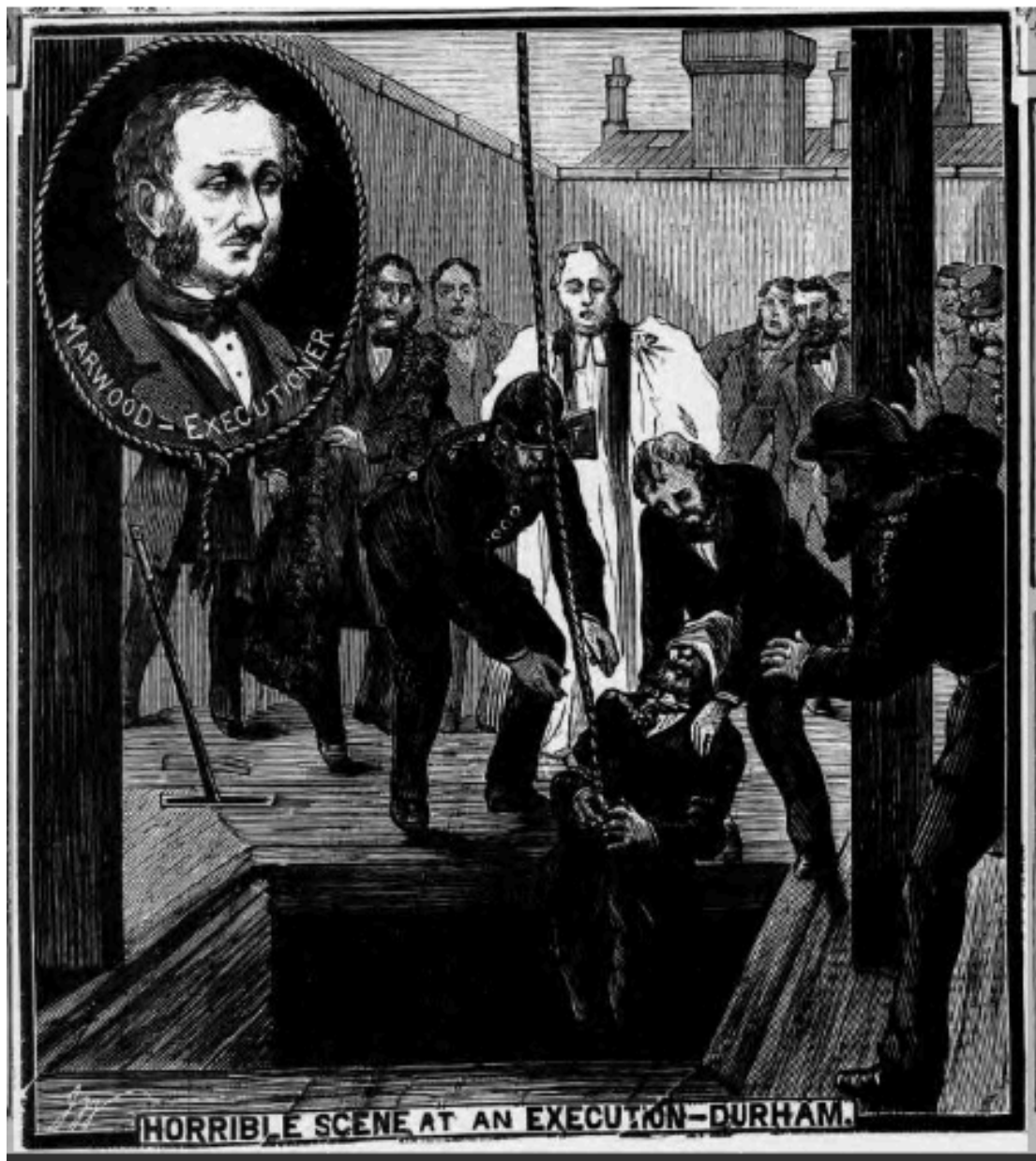


Illustration 6: 'Horrible Scene at an Execution-Durham', *Illustrated Police News*, 18<sup>th</sup> August, 1883. The Image depicts the execution of James Burton at Durham in 1883. Image reproduced courtesy of British Library Board. [www.britishnewspaperarchive.co.uk](http://www.britishnewspaperarchive.co.uk)

## Chapter Four:

### **'My Lifeless Body Must be Torn': Dissection in the North East of England 1752-1832**

'O pity my unhappy state,  
And now take warning by my fate,  
My lifeless body must be torn  
By sad dissections dreadful arm.'<sup>537</sup>

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<sup>537</sup> *Lamentation of Jane Jamieson , who was executed at Newcastle, on Saturday, the 7th day of March, 1829, for the murder of her own mother* (Gateshead: Stephenson, n.d.) University of Oxford, Bodleian Library, Broadside Ballads Harding B 14 (227).

In John Sykes' 1833 edition of his *Local Records or Historical Register of Remarkable Events* for the North East, a fascinating footnote appears. Following an entry on the 1752 execution of Ewen MacDonald on the Town Moor at Newcastle, the following additional detail is provided.

It was said that after the body was taken to the surgeon's Hall, and placed ready for dissection, that the surgeons were called to attend a case at the Infirmary, who, on their return, found MacDonald so far recovered as to be sitting up; he immediately begged for mercy, but a young surgeon not wishing to be disappointed of the dissection, seized a wooden mall with which he deprived him of life.

Its appearance in his 1833 edition, some 81 years after the date of the incident, is the first recorded instance of this remarkable event.<sup>538</sup> Local newspapers of the period make no mention of this incident other than to detail, in an unusually full manner, the execution and subsequent dissection with reference to the operating surgeons.

This afternoon the publick (sic) dissection of the Body of the Criminal, (executed here on Thursday Fortnight) with lectures thereon, in Pursuance of the last Act of Parliament was finished at the Surgeons Hall; The Lecturers were Mr Hallowell, Mr Stodart, Mr Greenwell, and Mr Lambert. Mr Hallowell exhibited all the Bones of the Body, and Abdominal Viscera; Mr Stodart the Manner of Nature's converting our Aliment into blood, with a Description of its circulation; Mr Greenwell, the Parts belonging to Generation, and the Eye; and Mr Lambert the Muscular Parts of the whole Body; All which were executed with the greatest accuracy, and very much to the advantage of the younger gentlemen of the faculty.<sup>539</sup>

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<sup>538</sup> Sykes went on to record that 'It was further reported, as just vengeance of God, that this young man was soon after killed in the stable by his own horse. They used to shew (Sic) a mall at the Surgeon's Hall as the identical one used by the surgeon.' J. Sykes, *Local Records; Or, Historical Register of Remarkable Events: Which Have Occurred in Northumberland and Durham, Newcastle upon Tyne, and Berwick upon Tweed, from the Earliest Period of Authentic Record, to the Present Time; with Biographical Notices of Deceased Persons of Talent, Eccentricity, and Longevity* (J. Sykes, 1833), p. 202. For a discussion of the veracity of the 'young man's' death see P. Low, 'Half-Hung or Half Baked', TWAM blog, June 4<sup>th</sup>, 2015. Accessed 17<sup>th</sup> March, 2019.

<sup>539</sup> <https://blog.twmuseums.org.uk/half-hung-or-half-baked/>  
*Newcastle Courant* 14<sup>th</sup> October 1752 p.2.

Post-execution revival was not unheard of, William Duell in 1740 revived 'just as he was about to be anatomized' and received a transportation pardon.<sup>540</sup> Similarly, the *Newcastle Courant* carried the following report of an execution in York in 1745,

Saturday last Abraham Dealtry was executed at Tyburn near the City of York for robbing on the highway but after having hung ten minutes and put into a coffin by his friends and carried in a cart in order to be buried in Trinity Churchyard. They observed signs of life in him, had him blooded and he revived. He is now a prisoner in York Castle but tis hoped will be reprieved.<sup>541</sup>

Indeed, the same month of MacDonald's execution the *Newcastle General Magazine* carried a story of 'A Jew...broke upon the wheel' in Amsterdam, whose body was carried off in the night by a surgeon, only for him to recover at the surgeon's home.<sup>542</sup> Tales of smuggling and subsequent escape accompanied many executions, most notably perhaps in the case of the rich or establishment figures. The 1777 execution at Tyburn of the Reverend William Dodd, a cause célèbre of eighteenth century society, occasioned 'a great many gossip stories about his being alive.' This view was not just a relic of the eighteenth-century and London society. Writing on the subject in 1822 a letter in The *Newcastle General Magazine* at once derided the notions current in 1777 as 'gossip stories' but went on, in great detail, to explain how the author's personal investigations since have led him to believe that 'there was something more than old wives stories in the report.'<sup>543</sup> Indeed, the perception that people of high standing and wealth, despite being executed in public view, could somehow secretly avoid death, was a popular one. It was arguably one of the major road blocks to the introduction of private execution, the belief being it would lead to 'secret killings and private reprieves.'<sup>544</sup>

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<sup>540</sup> In her work on dissection Hurren has uncovered a number of cases in which the condemned revived after hanging. She has noted that the 'customary hour' for which the body is so often reported as hanging, was more often a period of 20-45 minutes, which may go some way to explaining why. Hurren, *Dissecting the Criminal Corpse*, p. 77. It is important to note, as Battell-Lowman and Tarlow have, that although the press often relished the reporting of such incidents, giving them undue prominence, post-execution revival was 'atypical'. Battell-Lowman & Tarlow, *Harnessing the Power of the Criminal Corpse*, p.120; 'McKenzie, *Tyburn's Martyrs*, p. 20.

<sup>541</sup> *Newcastle Courant*, April 6<sup>th</sup>, 1745.

<sup>542</sup> 'Untitled Item,' *Newcastle General Magazine*, 9 (September, 1752), pp. 474–75.

<sup>543</sup> ONESIMUS, 'Was Dr. Dodd Restored to Life After He Was Hanged?', *The Newcastle Magazine* 1, (1) (January, 1822), p. 18.

<sup>544</sup> Morgan and Rushton, *Rogues, Thieves*, p. 125.



In the case of Ewen MacDonald's miraculous revival, the relative veracity of the story is deeply questionable to put it mildly. However, that it *may* have been believed is the focus here.<sup>545</sup> MacDonald's execution in Newcastle was the first in the North-East to be given the additional post death punishment of dissection, as enacted by the Murder Act of that same year. The dual punishments of dissection or hanging in chains, often called gibbeting, were not new punishments, having long predated the 1752 Murder Act, but this was to be the first time they were expressly tied to the crime of murder as a 'further terror and peculiar mark of infamy' for the 'horrid crime'.<sup>546</sup> The punishment of dissection remained in the legal arsenal until 1832 when it was rescinded by the Anatomy Act of that year. Interestingly, the note describing MacDonald's apparent Lazarine recovery first appeared the year after the Anatomy Act. The timing of both records of his case therefore act as the perfect prelude and coda to a period in which the punishment that followed execution was often far more greatly feared than the execution itself.<sup>547</sup> In short, the MacDonald myth bookends a period in which execution was only half of the sentence of death and often the lesser feared of the two.

In addressing the post-mortem punishment of dissection this chapter will be split into three sections. The first will place the punishment in its historical context, detailing its existence long before 1752. Secondly, an assessment will be undertaken of the incidence of its use across the regions sampled, between 1752-1832, and will seek

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<sup>545</sup> Testament to the enduring legacy of the half-hanged story can be seen in Macdonald's appearance in a recent path breaking work on post-mortem dissection. In an otherwise exceptional work, his date of execution is mis-recorded by two years (1754 instead of 1752) and the suggestion is made that the remarkable occurrence was reported in the newspaper at the time (*Newcastle Courant* 14<sup>th</sup> October, 1754. No such edition exists). However, accounting for the earlier error in reporting the year of the execution the *Newcastle Courant*, 14<sup>th</sup> October, 1752 did carry a report, as highlighted above, but did not include any details of foul play or unexpected revival. The quote mistakenly attributed to the *Newcastle Courant* is actually from Syke's *Local Records*. One reason for the error may be ascertained from Sykes who wrote at the time, 'I have thrown this note together from the report current some years ago, but which is now fast dying away.' It is worthy of further note that Sykes' records were published one year following the Anatomy Act that removed the post-mortem punishment and as such were a time of fevered debate on medical practice. Sykes, *Local Records*, p. 202; E. T. Hurren, *Dissecting the Criminal Corpse: Staging Post-Execution Punishment in Early Modern England*, (Palgrave Macmillan, 2016), pp. 3-4.

<sup>546</sup> J. M. Beattie, *Crime and the Courts in England 1660-1800* (OUP Oxford, 1986), p. 527. For a detailed assessment of the build-up to the Murder Act see Beattie pp. 525-530 and King, *Punishing*, pp. 29-76.

<sup>547</sup> L. Fitzharris, 'A Fate Worse than Death: Displaying Criminals' Corpses,' *The Guardian*. Accessed August 14, 2014. <http://www.theguardian.com/science/blog/2011/nov/07/fate-worse-death-displaying-corpses>.

to show who suffered the punishment and why. Finally, this chapter will examine instances of its application and presentation and seek to show both the people that attended the spectacle and the wider societal shame attached to the punishment. As highlighted in the introduction, the available evidence is predominantly weighted in Newcastle's favour, owing to their relatively unique Barber Surgeons Hall and the substantive records that survive therefrom. It must be acknowledged then, as earlier studies have noted, that in so doing one runs the risk of presenting an 'atypical' picture of dissection in the North East.<sup>548</sup>

### **Post Death Punishments: Contextualising dissection**

Before addressing the application and incidence of post death punishments in the North East of England, it is first necessary to explain the social and political context out of which these punishments arose. Dissection predated the period in various forms, but 'only as a consequence of a subsequent executive decision' and never within the court's discretion itself.<sup>549</sup> The Murder Act of 1752 changed this and expressly stated that they were to be indelibly linked to the punishment of the crime of murder as 'some further terror' for 'better preventing the horrid crime of murder.'<sup>550</sup> It was a legislative reaction to a crime that was deemed above all others in its villainy and a spike in serious crime. Indicative of this view was the opening paragraph of a broadsheet printed at George Harger's 1762 execution at York Castle.

'Murder is the highest and most atrocious Crime that can be committed by mankind, as in a moment it cuts the Thread of Life, and sends the immortal soul instantaneously to its grand account, perhaps quite unprepared.'<sup>551</sup>

On one level the Murder Act was a legislative sop to satiate the desires of the medical fraternity, by providing them with a steadier flow of anatomical specimens than they had ever previously been allowed. Given the frequency of execution, the

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<sup>548</sup> Hurren, *Dissecting*, p. 196.

<sup>549</sup> Beattie, *Crime and the Courts*, p. 529.

<sup>550</sup> The Murder Act 1751 (25 Geo 2 c 37).

<sup>551</sup> *Last Speech and Dying Words of George Harger, a Blacksmith of Southowram, Executed at Tyburn*. Document ID: 01468. Northgate Calderdale Libraries. Accessed July 15<sup>th</sup>, 2018. <https://www.calderdale.gov.uk/wtw/search/controlservlet?PagelD=Detail&DocId=101468>

Act, it was hoped, would provide an abundant supply of cadavers for a profession hitherto hidebound, since Henry VIII's 1540 edict, to a paltry four criminal bodies a year.<sup>552</sup> However, its introduction was arguably much more a direct response to a myriad of social and legal pressures than to any medical claims. Chief amongst these was a climate of increasing fear about the ineffectuality of the criminal law, fuelled by post war worries that demobilized troops were causing a crime wave.<sup>553</sup> This assertion was further fuelled by a burgeoning print culture, which had a 'significant impact' on the development of a narrative that execution in and of itself was not punishment enough.<sup>554</sup> An ideological viewpoint that was not new in and of itself, as the anonymously published text *Hanging Not Punishment Enough* of 1701 would attest to.<sup>555</sup> As other historians of the period have recognized, the Act itself was therefore 'of a piece with other changes in penal practice' in the mid eighteenth century; a bill intended to extend the experience, intensity and visibility of punishment on the criminal body.<sup>556</sup>

## Applying the punishment

In the eighty years between the Murder Act (1752) and the Anatomy Act (1832) that ultimately removed dissection from the post-mortem penal arsenal, the punishment was adopted 21 times in the regions sampled; an average of roughly once every three and a half years.<sup>557</sup> Of the two punishments offered by the Murder Act, recent research has shown that the predominant method of punishment, by far, was dissection on the anatomists' slab. Of the multitudes hanged for murder in England and Wales between 1752 and 1832 over 80% were given to the anatomists with only 9.6% Hung in Chains.<sup>558</sup> The picture is very similar in the North East, where of the 25

<sup>552</sup> Ward, 'Criminal Corpse', p.64.

<sup>553</sup> Beattie, *Crime and the Courts*, p. 525.

<sup>554</sup> R. Ward, 'Print Culture and Responses to Crime in Mid-Eighteenth-Century London' (PhD Thesis, University of Sheffield, 2010), p. 202, <http://etheses.whiterose.ac.uk/1257/>.

<sup>555</sup> Anon, (1701) *Hanging Not Punishment Enough: For Murtherers, High-Way Men, and House-Breakers; Offered to the Consideration of the Two Houses of Parliament*.

<sup>556</sup> Ward, *Print Culture, Crime and Justice in 18th-Century London* (Bloomsbury Publishing, 2014), p. 190.

<sup>557</sup> These figures have been collated from TNA Records of Assize and Records for the County Palatine of Durham. They have also been further cross-referenced against regional newspapers using the British Newspaper Archive ([www.britishnewspaperarchive.co.uk](http://www.britishnewspaperarchive.co.uk)), eighteenth and nineteenth-century local histories and surviving execution broadsides.

<sup>558</sup> S. Tarlow, 'The Technology of the Gibbet,' *International Journal of Historical Archaeology* 18 (4) (September, 2014), p. 669.

people who were executed on the charge of murder, between 1752-1832, 21 (84%), were sentenced to dissection and, as will be shown in chapter five, only two were gibbeted (7.6%).<sup>559</sup> In two instances, people were executed for murder but their post death sentences are seemingly absent from both the official sentencing records and the newspapers.<sup>560</sup> Furthermore, surviving surgeons' records and burial records show no evidence for their post death provision. However, one can be reasonably secure in the assumption that they were not gibbeted, given the very public recording of all other instances and indeed the very public and long-lasting nature of the bodies' presentation in most other instances. Given this, if one were to assume they were therefore dissected, this would make a marked difference to the statistics meaning dissection accounted for 92% of all murder charges in the period. A finding that lends further weight to Helen MacDonald's assertion that during this period surgeons were the 'secondary executioners of the law.'<sup>561</sup>

Across the wider Northern Circuit, national studies have identified the major suppliers of bodies as Lancashire (35) and Yorkshire (53). Indeed, owing to the frequency of criminals being executed together, particularly in Yorkshire, bodies were often sent to 'another area' for dissection in order to ensure their freshness.<sup>562</sup> By comparison, the three counties sampled in this thesis provided less than half of the bodies for dissection than Yorkshire in this period. Of the recorded instances of dissection in the counties sampled in this thesis the vast majority were handed out at the Durham Assizes, twelve (57.1%), with six (28.5%) in Newcastle and only four

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<sup>559</sup> There were two other instances of post-mortem punishment in the years sampled, one was a charge for Highway Robbery, Robert Hazlitt (1770), sentenced to Hang in Chains. The other case was Peter Patterson charged, alongside William Elder, for their alleged roles in a riot in Hexham. Both were sentenced to be 'drawn upon an hurdle to the place of execution....then and there severally hanged by the neck, to be severally cut down alive and have their entrails taken out and burnt before their faces.' ASSI 42/5. Only Patterson suffered this fate as Elder was later reprieved.

<sup>560</sup> The cases in question are Thomas Coulson hung at Durham in 1767 (DURH 16/1) and Mary Nicholson hung at Durham in 1799 (DURH 16/2). Nicholson had been sentenced to death for the poisoning of her mistress at Little Staynton. One reason her post-mortem punishment may not have been reported was that her botched execution dominated the local newspaper reports. Having already waited a year, following a reprieve whilst twelve judges decided a point of law on the case, Nicholson was subjected to further agonies at her send off the *Newcastle Courant* noting that 'whilst she was suspended the rope broke and she fell to the ground'. She had to wait nearly three quarters of an hour for another rope to be procured at which point she was finally 'launched into eternity.' *Newcastle Courant*, 27<sup>th</sup> July, 1799. Owing to the uncertainty around the post-mortem provision in these cases neither has been included in later illustrated figures detailing the breakdown of dissection by decade and region.

<sup>561</sup> H. MacDonald, *Human Remains: Dissection and Its Histories* (Yale University Press, 2006), p. 2.

<sup>562</sup> Statistics drawn from E. Hurren, *Dissecting*, pp. 179-181.

(19.04%) in Northumberland (highlighted in figure 10). Durham therefore accounted for over half of all instances of dissection in the region, a figure in line with findings in chapters two and three regarding Durham's higher incidence of execution sentencing in the period. Despite its predominance in provision over neighbouring Newcastle and Northumberland, in her pioneering national study, Hurren identified Durham nationally as part of a 'second rank chain of supply' of bodies amongst English counties, with Northumberland falling into the 'third-rank' of body-suppliers, alongside other counties which provided single figures in the period.<sup>563</sup> The relative absence of dissection sentencing in Northumberland was largely down to the nature of crimes prosecuted in that region. Murder, particularly in rural locations was rarely the preserve of the assizes, instead property crimes made up the vast bulk of cases. Furthermore, although four sentences were applied in cases before the Northumberland Assizes, it would appear that no dissections ever took place on Northumberland land. In all four instances the bodies of the condemned are reported as having been delivered to the Barber Surgeons, in Newcastle. As will be shown in greater detail later, this was most likely owing to the predominance of the Barber Surgeons and Newcastle medical community and also a response to limited facilities for the sentences' public enactment in Northumberland. As such, when reconfigured by dissection location, as with earlier execution figures regarding Northumberland prisoners executions at Westgate, we see a closer similarity between Newcastle 10 (45.5%) and Durham 12 (54.5%) (Illustrated in figure 11).

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<sup>563</sup> Whilst noting places such as Durham's lower provision of cadavers Hurren cautioned that 'the symbolic importance of their delivery schemes should not be under-estimated.' Hurren, *Dissecting*, p. 180.

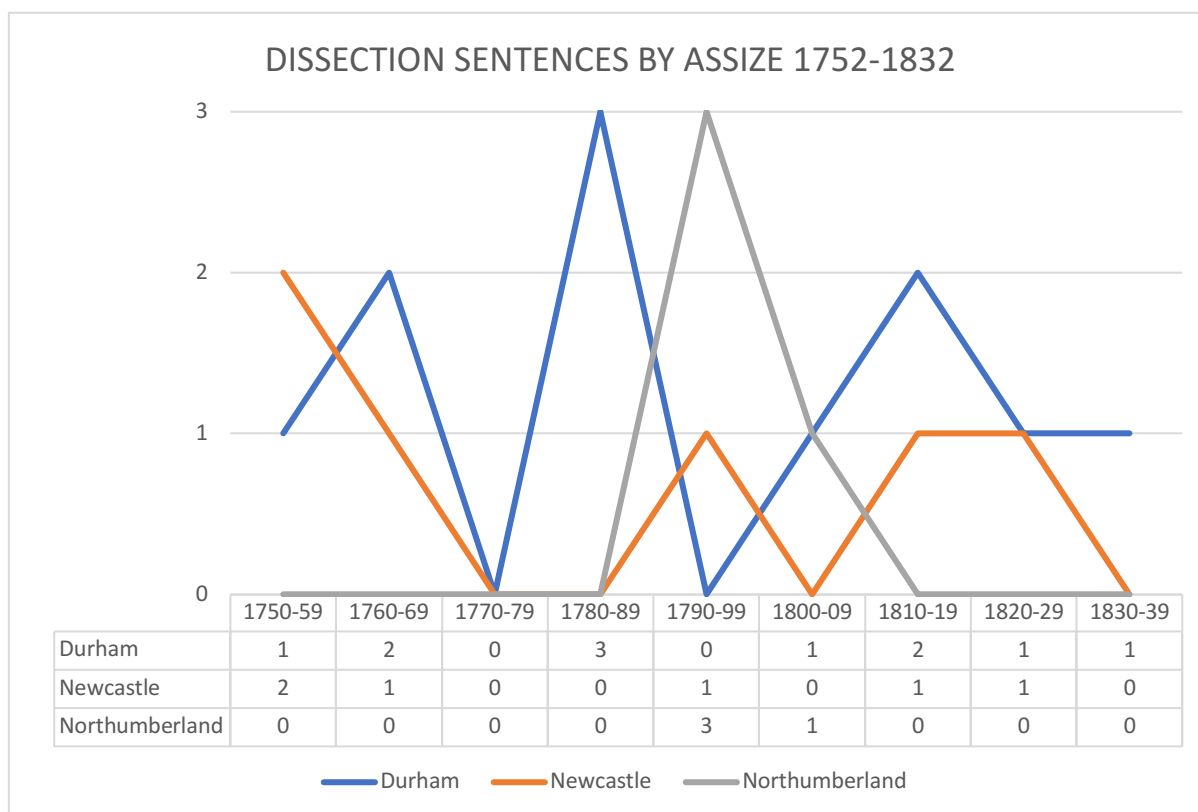


Figure 10 – Dissection sentences by assize 1752-1832. Source: Assize Court Records and Records of the Palatinate of Durham.

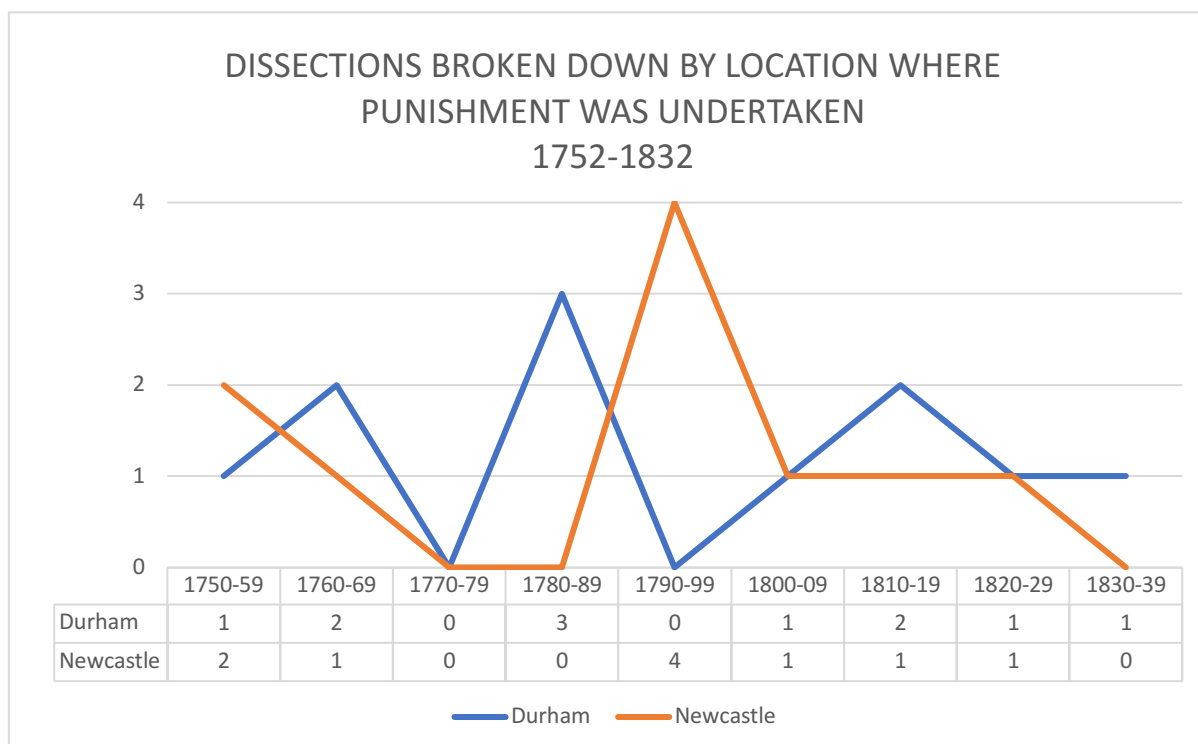


Figure 11 - Dissections broken down by location where punishment was undertaken 1752-1832. Source: Assize Court Records , Records of the Palatinate of Durham and regional newspapers.

One doesn't have to look far for motivating evidence of the predominance of dissection over gibbeting in the North East. The shortage of cadavers for anatomical dissection in this period has been well documented, particularly in London, and was as acute, if not more so in the North East.<sup>564</sup> The relative paucity of executions created a dire need for specimens which the gallows alone could not meet. In Newcastle and Northumberland there was no charge of dissection between 1765 and 1789, creating a 23-year period without bodies for instruction. Perhaps unsurprisingly then, the illicit trades of corpse snatching and resurrectionism that were the life-blood of the anatomists across England and Scotland, were ever present in the North East in this period. A petition in the Barber Surgeons of Newcastle's records, dated between 1770-1780, details a father's pleas for the guild to support his son who was apprenticed to 'one of their body' and had been caught in a 'foolish and rash attempt to take up a corpse in St. Nicholas' Church Yard in order to dissect it.' He notes both the 'popular odium' surrounding the boy following the act and the 'resentment of the Town' that he now faces.<sup>565</sup>

It is notable that even in the well-established peak years of execution, between the 1780's and 1790's we see instances of body snatching causing public anger on a large scale in the North East. On August 4<sup>th</sup>, 1792 an entry was made into the Parish registers for Belford, Northumberland, detailing that nearby Berwick had seen 'riots...for some days past.' The account was written by local Vicar William Armstrong and was relating to an incident of four days previous. In the dead of night, a small band of surgeons had entered Belford Church Yard and set about 'stealing several Dead bodies.'<sup>566</sup> The men in question were named as Nesbitt, Miller and Yellowly and their deeds led to a full-scale public riot. Reporting on the carnage, the *Newcastle Courant* stated that 'A rumour having prevailed amongst the lower class

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<sup>564</sup> The problem of body supply is still apparent today, despite recent upsurges in donation, K. Burgess, 'Surge in people donating bodies to medical schools, *The Times*, March 8<sup>th</sup> 2018. Accessed December 22<sup>nd</sup>, 2018. <https://www.thetimes.co.uk/article/surge-in-people-donating-bodies-to-medical-schools-7zncd36fc>.

<sup>565</sup> Petitions to Company including one concerning a grave robbing case n.d. c1770's - 1780's. TWAM GU.BS/23/1-3. As will be highlighted in chapter six, the lamentable state of many graveyards in the region made them rich pickings for interested parties. In the particular case of St Nicholas, it would appear that efforts had already been made to solve the matter, one local nineteenth century history noted that in 1761 a subscription had been raised for 'the levelling and enclosing the burial ground of St Nicholas' church-yard in Newcastle, in order to render it a more agreeable approach to the church, as well as a decent place of interment for the dead.'<sup>565</sup> Sykes, *Local Records*, p. 108.

<sup>566</sup> NRO EP/124.

inhabitants of Berwick...a large mob assembled.' The actions of the assembled mob 'called for the utmost exertion of the magistracy, the riot act was read without effect and to their aid they were under the necessity of calling forth troops in garrison before the tumultuous mob could be induced to disperse.'<sup>567</sup> Similarly, between 1800 and 1832 Newcastle and Northumberland only saw two dissections take place. Testament to this pronounced shortage can be seen in a fascinating letter in the *Newcastle Magazine*, in 1823, regarding the practice of body snatching. Signed with the nom de plume Blancardus, the author asked how, if body snatching was prevented, 'the study of anatomy is to be forwarded.'<sup>568</sup> Blancardus's impassioned letter expounded the necessity of the dastardly practice, owing to the paucity of cadavers provided for by current legislation. In a call reminiscent of those by William Wilberforce, as highlighted in the work of Richard Ward, Blancardus went on to suggest an extension of the punishment of dissection to 'the bodies of all felo-de-se suicides' and 'to some crimes short of murder.'<sup>569</sup> In one instance we get an insight into the rarity of a fresh corpse for anatomical dissection and lecturing. Reporting on Jane Jameson's dissection at Newcastle in 1829, Thomas Giordani Wright noted that the lecturer had a 'good opportunity' to provide useful instruction owing to the 'the freshness of the brain', noting further 'more so than usually falls to the lot of an anatomical teacher.'<sup>570</sup> Clearly then body supply was comparatively rare and continued to be throughout the period. As late as 1829 a letter to the Editor of the *Newcastle Courant* noted how,

Innumerable are the vague and most unfounded stories in circulation here, about resurrectionism. So much does every person almost fear such men, that after dark everyone you meet in any bye place is sure to be taken for a resurrection-man.

The paper went on detail numerous incidences of people mistaken for resurrectionists that had suffered violence against their person, noting that, 'In Newcastle, as in Sunderland, the utmost agitation and terror prevails, on the subject

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<sup>567</sup> *Newcastle Courant*, August 4<sup>th</sup>, 1792; *Derby Mercury*, 16<sup>th</sup> August. Berwick's proximity to the Scottish border may well have made it particularly susceptible to the illicit trade in body snatching.

<sup>568</sup> BLANCARDUS, 'On the Practice of Body-Snatching', *The Newcastle Magazine* 2 (4) (April, 1823), p. 197.

<sup>569</sup> Ward, 'Criminal Corpse', pp. 63-87; BLANCARDUS, 'Body-Snatching', p. 197.

<sup>570</sup> Johnson & Wright, *Diaries*, p. 293.



of resurrection men.’<sup>571</sup>

## **A Gendered Punishment:**

In large part owing to the comparatively low execution rates for females, instances of female dissection were rare in this period. In the North East of England between 1752-1832 of the 22 people subjected to the punishment only six (27%) were women, (see figure 12), a figure broadly in line with recent figures from Scotland.<sup>572</sup> As with wider national figures, this masked long gaps where no women were subjected to dissection. Indeed, Durham’s last case of female dissection, that of Margaret Tinkler, took place in 1781, five decades before the punishment was removed from the legal arsenal.<sup>573</sup> Similarly, only two female prisoners of Newcastle ever received the punishment, bookending the period sampled, Dorothy Gatenby in 1754 was the first woman dissected in the region and Jane Jameson, in 1829, the last.<sup>574</sup> Although Newcastle had the provision of Northumberland’s prisoners this only amounted to two others, both provided in the same year, 1792.<sup>575</sup> As such, Newcastle’s surgeons underwent remarkably long periods without a female body for instruction, from 1755-1791 and from 1793-1829.

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<sup>571</sup> *Newcastle Courant*, 24<sup>th</sup> January, 1829.

<sup>572</sup> Bennett in her pioneering study of Scottish execution and post-mortem punishment noted 110 cases of dissection between 1752-1832 of which 25 (22.7%) were female. Table 6.1 Bennet, *Criminal Corpse*, p. 170.

<sup>573</sup> DURH 16/2

<sup>574</sup> Dorothy Gatenby ASSI 42/5, Jane Jameson ASSI 41/14

<sup>575</sup> Jane and Eleanor Clarke were sentenced alongside William Winter at the Northumberland assizes. All three were initially sentenced to dissection but Winter’s sentence was subsequently changed to Hanging in Chains. The case is covered in detail in chapter five.

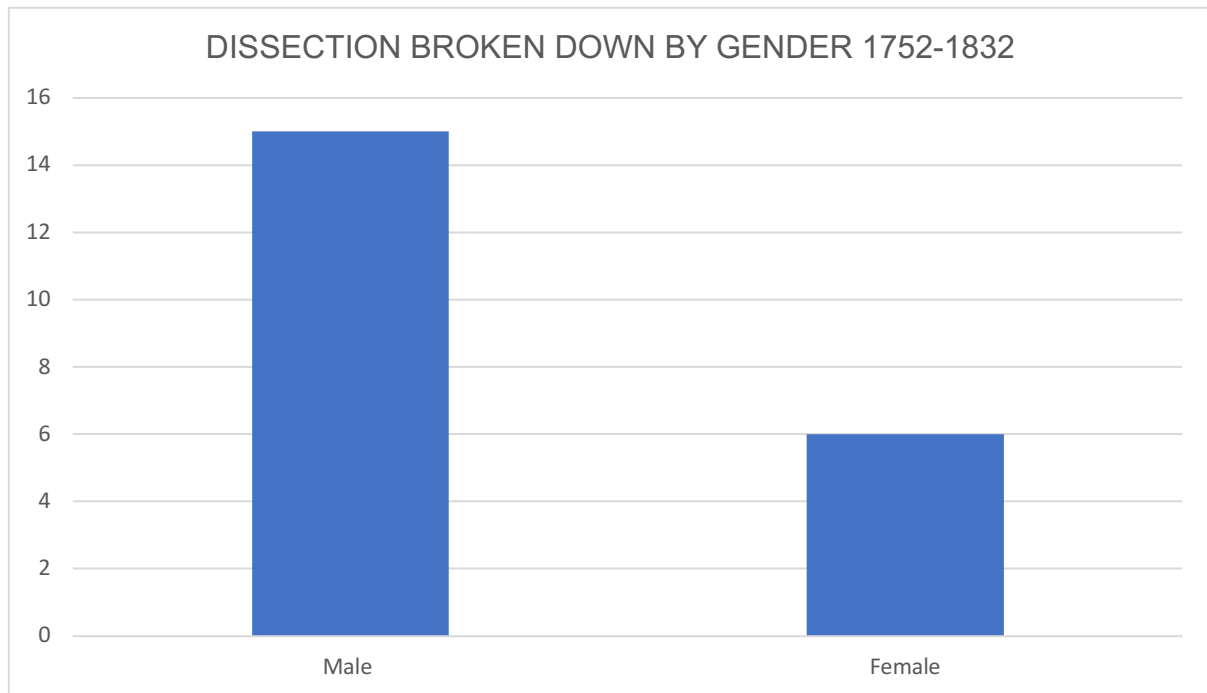


Figure 12 - Dissection by gender 1752-1832. Source: Assize Court Records and Records of the Palatinate of Durham.

Of the limited early work that had been undertaken on post-mortem punishments in the North East, the suggestion had been of the eighteenth century that women were 'far more likely than men to be dissected.'<sup>576</sup> Rushton and Morgan posited that a driving factor may well have been the growing 'intellectual interest' in what Jordanova has identified as the 'sexual potential of medical anatomy.' These findings were derived from the assertion that between 1750-1800 half of the women executed were dissected, but only an eighth of the men faced the same punishment. Morgan and Rushton in locating the marked difference noted it as being in 'striking divergence' with the 'sensibility and propriety' that had, in other areas, led to the decline of public punishments enacted on women.<sup>577</sup> However, recent national studies have shown that, unlike the gibbet, the punishment of dissection was only ever used in the punishment of the crime of murder. As such, earlier assertions that included all cases of execution in the period are fundamentally problematic.<sup>578</sup> The assertion that a fifth of the women in the North East that were executed were

<sup>576</sup> Morgan and Rushton, *Rogues, Thieves*, p. 150.

<sup>577</sup> Morgan and Rushton, *Rogues, Thieves*, pp. 150-151 citing L. Jordanova, 'Natural Facts. A Historical Perspective on Science and Sexuality,' in C. P. MacCormack and M. Strathern (eds.) *Nature, Culture and Gender* (Cambridge University Press, 1980), pp. 54-57.

<sup>578</sup> Tarlow, 'The Technology of the Gibbet,' 671.

dissected, as opposed to only an eighth of their male counterparts is predicated on counting *all* executions between 1752-1800.<sup>579</sup> In the North East, this was equally true, as all instances of the punishment's adoption were for the crime of murder. Between 1752-1832, of the 25 recorded post death sentences, 23 are for murder and in the case of dissection all were. If the figures are indicative of anything then it is that they serve to highlight that Murder was the crime for which woman were most likely to suffer the rope. Earlier comprehensive studies note that murder charges accounted for 52.7% of all female executions in England and Wales between 1735-1799.<sup>580</sup> This new evidence for the North East then clearly presents a picture more in line with national studies regarding the gendered nature of post death punishment. However, it does not seek to refute the case that 'female bodies were always in demand by the anatomists.'<sup>581</sup>

## Dissection in the North East of England

### Durham:

Despite the predominance of dissection sentences in the region, the provision for its undertaking was limited in Durham. In the few instances where provision is recorded, the details are limited but a murky picture emerges. At the first case of dissection in Durham following the Murder Act, William Heugh in 1757, the Gaol Books record the following 'and let his body afterwards be delivered to Mr. John Bainbridge and Mr. Rich Hopper Surgeons to be by them dissected.' A similar description attended Charles Todd's execution sentence in 1762 and Margaret Middleton's the following year, with request for the body to be delivered to 'Mr. John Drake Bainbridge Surgeon.'<sup>582</sup> Early records for the period show that Richard Hopper was a member of the Common Council of the City and Bainbridge was the city's first Mayor.<sup>583</sup>

<sup>579</sup> Morgan and Rushton, *Rogues, Thieves And the Rule of Law*, 2005, p. 150.

<sup>580</sup> 'Female Executions 1735-1799', Capital Punishment UK. Accessed 17<sup>th</sup> January 2018. <http://www.capitalpunishmentuk.org/fem1735.html>

<sup>581</sup> Tarlow, 'The Technology of the Gibbet,' p. 671.

<sup>582</sup> DURH 16/1

<sup>583</sup> Notice to Christopher Hopper, a member of the Common Council of the City of Durham and Framwelgate, from John Drake Bainbridge, mayor, informing him of a meeting of the Corporation of the City to be held 30 September 1768 for the purpose of filling four vacancies among the Aldermen within the Corporation of the City, 27 September 1768. DRO D/X 1098/2; Order of Joseph Grey, mayor of the City of Durham and Framwelgate, requiring John Airson, sergeant at mace for the City to summon a meeting of all the Aldermen and twenty four members of the Common Council of the City on 12 January 1764; including list of the names and addresses of the Aldermen and members of the

Bainbridge also appears in the records of the Durham Barbers, first established in 1469.<sup>584</sup> However, the specific provision of naming the surgeon to receive the body in official records was rare and appears exclusive to Durham in the region. Another dissection was not to occur until 1781, the same year that the Durham Infirmary was granted land for construction in Allertongate (later to be the site of dissections), however Margaret Tinkler's dissection happened elsewhere.<sup>585</sup> Unlike earlier examples in the region, no official record was given as to the surgeons to whom the body should be delivered but newspaper reports of the time noted that the dissection happened 'at a place called White Smocks, near Durham, by Mr Smith and Mr Ward.'<sup>586</sup> Whitesmocks was, and still is, a region to the immediate North West of the city and to the immediate west of Dryburn. However, in the absence of detailed reports of the location of these dissections, one other potential possibility appears. The name White Smocks was also given to a local Inn 'on the direct road from Darlington to Newcastle', shown in illustration 7. Interestingly, Page's eighteenth century history of the region recorded that Lord Derwentwater's body 'rested at White Smocks' Inn on route to his eventual burial.'<sup>587</sup> Whilst we cannot be certain of the use of the Inn for dissections it is not inconceivable, given its history, and would fall in line with established coroner's inquest practices and wider national studies that have shown that 'up to the 1790's' a wide range of venues that 'tended

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Common Council, 11th January 1764. DRO, D/X 1098/1; Hutchinson's history of Durham detailed Bainbridge's appointment as Durham's first mayor 'our trusty and well-beloved John Drake Bainbridge to be the first and modern mayor of the said city of Durham and Framwelgate. W. Hutchinson *The History and Antiquities of the County Palatine of Durham, Vol II*, (Newcastle, MDCCLXXXVII), p. 45. Accessed 17<sup>th</sup> November, 2018 <http://ota.ox.ac.uk/text/4835.html>.

<sup>584</sup> An eighteenth century copy survives of the establishing record of the company. Durham University Special Collections (DUSC) DCG1/13. An admittance to the company appears for one John Bainbridge on 31<sup>st</sup> May 1720. He is frequently recorded as being in attendance at 'quarterly meetings' held at the 'tool booth' in the 1720s. DCG 1/7, DCG 1/3 However, in later records one John Drake Bainbridge was admitted to the company on 30th October 1765. DCG 1/7

<sup>585</sup> The original deed for the infirmary survives in Durham Record Office dated 20<sup>th</sup> October 1791 DRO H/Du 49. Sadly, the records for the infirmary as limited at best and provide little if any instruction as to dissection practice. As with dissection provision, Durham lagged behind Newcastle in other medical provision in this period, Newcastle having opened an Infirmary outside the city walls on the 'Forth Banks, overlooking the Tyne' in 1751. R. R. Hall and W. K. Yeates, 'The Development of Urology in the Northern Region' in D. Gardner-Medwin et al. (eds.) *Medicine in Northumbria: Essays in the History of Medicine in the North East of England*, (Newcastle: The Pybus Society, 1993) p. 343. The early records for the Durham Infirmary are very scant but the original deed survives with an agreement of land to be allocated for the premises to be built in Allertongate 'for the reception cure and relief of poor persons afflicted with disease. 20<sup>th</sup> October, 1791. DRO H/Du 49.

<sup>586</sup> *Newcastle Courant*, 24<sup>th</sup> November, 1781.

<sup>587</sup> "The city of Durham: Introduction (3 of 3)," in *A History of the County of Durham: Volume 3*, ed. William Page (London: Victoria County History, 1928), 29-53. *British History Online*. Accessed April 17<sup>th</sup>, 2019, <http://www.british-history.ac.uk/vch/durham/vol3/pp29-53>.

to be more domestic and small-scale' were used for criminal dissections.<sup>588</sup> It would also chime with Hurren's findings that in the eighteenth century there was a desire by provincial surgeons to dissect in 'community spaces'.<sup>589</sup> Reports of later nineteenth century dissections record that they took place at the Durham Infirmary, a finding that again concurs with Hurren's that, post 1790, 'law and justice was more formulaic taking place inside a dedicated dead-house or morgue of a voluntary hospital'.<sup>590</sup> The Infirmary remained the site of criminal dissection right up until the last case in the region, that of Thomas Clarke in 1831, whose body was 'conveyed' there following his execution.<sup>591</sup>



Illustration 7: *White Smocks near Durham, 1791*. Reproduced by permission of Ushaw College and Durham University Library.

<sup>588</sup> Hurren's pioneering work on the national picture of dissection in this period notes that 'criminal dissections happened up to the 1790s in either a Shire Hall, medical dispensary, the domestic premises of a surgeon, or a local goal.' Hurren, *Dissecting*, p. 184. Reporting on the 1763 dissection of Margaret Middleton a later history noted that the Coroner's inquest on the body of the child with whom's murder Coulson was charged took place at the aptly named Farewell Hall. However, this site would not tally with White Smocks as it is to the immediate south of Durham. Sykes, , *Local Records*, Vol 2, p.375.

<sup>589</sup> 'In manufacturing towns like Halifax, Sheffield and Wakefield, provincial physicians and surgeons were anxious to dissect in community spaces like those in use across the North West.' Hurren, *Dissecting*, p. 195.

<sup>590</sup> Hurren. *Dissecting*, p.185.

<sup>591</sup> *Durham County Advertiser*, 4th March, 1831.

## Northumberland:

As has been earlier alluded to, in all four cases of the enactment of dissection, reports suggest that the bodies of the prisoners of Northumberland were 'sent to the Surgeon's Hall for dissection.'<sup>592</sup> This provision concurs with recently identified practices in Scotland where, particularly of the nineteenth century, bodies executed elsewhere were increasingly sent to Edinburgh.<sup>593</sup> As will be shown, Newcastle's facilities for dissection were vastly superior to neighbouring regions, however another reason for this transferral of judicial responsibility also presents itself. In all four instances of post-mortem dissection for prisoners of Northumberland, their executions took place at Newcastle's Westgate. The proximity of the body to the Surgeon's Hall, roughly one mile from the site of execution, would have been eminently preferable to risking its recovery on the long and sometimes treacherous route back to Morpeth.

## Newcastle

The work of anatomists and the practice of dissection long pre-dated the Murder Act in the North East of England and particularly in Newcastle. From as early as the fifteenth century, Newcastle was home to a well-established company of Barber Surgeons. The earliest surviving records of the guild dates from 1442 and contains, amongst other things, a note from the society's Ordinary calling for a performance of the 'Baptizing of Christ' by the Company, to take place on 'Corpus Christi day' and a rule that no 'barber or apprentice should shave on a Sunday, neither within the town nor without, by a mile's space.'<sup>594</sup> The building that housed the surgeons is mentioned in passing in late seventeenth and early eighteenth century accounts of the town. The very fact that it was deemed worthy of a visitation by the passing travellers who documented it gives the lie to its impressive and prominent position in the town. In the late 1690s Celia Fiennes detailed her visit to the hall, in which she noted the very public display of anatomised bodies.

At Newcastle I went to see the Barber Surgeons' Hall  
which was within a pretty garden walled in, full of flowers

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<sup>592</sup> Reporting on the case of Jane and Eleanor Clarke 1792, *Newcastle Courant*, 11<sup>th</sup> August, 1792. The four Northumberland prisoners subjected to post-mortem dissection in this period were Thomas Watson (1790), Jane Clarke and Eleanor Clarke (1792) and Thomas Clare (1805).

<sup>593</sup> Bennett, *Criminal Corpse*, p. 171.

<sup>594</sup> Pybus, 'Barber Surgeons' p. 287.

and greens in potts and in the Borders; it's a good neate building of Brick....In this roome I could take a viewe of the whole town, it standing on high ground, and a pretty Lofty building.

Fiennes detailed the layout of the dissection lecture room,

There I saw the roome with a round table in it railed round with seates or Benches for ye Conveniency in their dissecting and anatomising a body, and reading Lectures on all parts.<sup>595</sup>

Fiennes' observations give further support to Hurren's assertion that, in its facilities, Newcastle shared a 'spatial architecture' with Edinburgh and London that made it atypical of the neighbouring regions and the large majority of the country.<sup>596</sup>

The building was remodelled in 1730 and reconstructed in a wholly original style, a description of which is captured in Bourne's *History of Newcastle*. As with its predecessor this was certainly not an inconspicuous building, standing as it did upon tall piazzas and 'surrounded by gravel walks, each of which is adorned with a statue'. Indeed, so grand was it that Bourne thought it, 'rather too great an ornament for such a dirty part of the town.'<sup>597</sup> The building as referred to by Fiennes above, stood atop a steep hill and the dirty part of the town in Bourne's summation may well have been the view below that would have been the Quay and Sandhill both of which were 'ghettos...of economic marginality' and the home and workplace of numerous of those executed in the period.<sup>598</sup>

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<sup>595</sup> C. Fiennes (1888), *Through England on a Side Saddle: In the Time of William and Mary* (Cambridge University Press, 2010), pp. 177-178.

<sup>596</sup> Hurren, *Dissecting*, p. 196.

<sup>597</sup> H. Bourne, *The History of Newcastle Upon Tyne: Or, the Ancient and Present State of That Town. By the Late Henry Bourne, ...* (John White, 1736), pp. 138-39.

<sup>598</sup> R. Houston, 'Fact, Truth, and the Limits of Sympathy: Newspaper Reporting of Suicide in the North of England, circa 1750-1830,' *Studies in the Literary Imagination* 44 (2) (Fall, 2011), p. 96. The reconstructed building remained the home of the Barber Surgeons right through from Bourne's early visit until the era of the Anatomy Act and became the temporary house for the new Medical School established, 'In common with several of England's provincial universities' in the wake of the Anatomy Act. Dale, 'Newcastle's Medical Schools' in *Medicine in Northumbria*, pp. 211-223. p. 211.

## Doing Dissection

Provision for dissections took place as soon as possible after the sentence of execution had been pronounced. In some instances, as at the execution of Margaret Tinkler, her surgeon actually attended her to her hanging.<sup>599</sup> Once the body had hung the customary hour, it was transported to the designated site of dissection. The speed with which bodies were taken from the gallows to the surgeons was imperative, particularly at a time when 'effective preservation was not available.'<sup>600</sup> To provide useful instruction the body had to be relatively free from decay and as fresh as possible and therefore moved posthaste. Despite this urgency and a desperate need for cadavers, criminal bodies were not uniformly accepted for dissection. It is clear that in certain instances discretion was used to assess the validity of the corpse for practical dissection. In the case of George Harger, executed at Tyburn in York 1762, surviving reports suggest that when he was 'taken down, he was delivered to the Surgeons to be dissected.'<sup>601</sup> However, in their coverage of the execution, the *Newcastle Courant* noted that, although initially sentenced to be 'dissected and anatomized...we hear the surgeons have refused to take his Body, on account of its being so full of Ulcers, and that it is to be hung in chains.'<sup>602</sup>

Sources available rarely, if ever, detail the process of transportation from the gallows to the anatomist's slab, other than occasional reports stating simply that it happened after the body had hung for the customary hour. Reports of London executions show that 'Bodies were claimed at the gallows from the hangman by the Beadle and Porter, placed in a coffin and covered with a pall (both reusable) for transport back to the Hall.'<sup>603</sup> As highlighted in chapter two, capital convicts in the region were often conveyed to their execution on a cart either atop or alongside their coffin and therefore may well have been placed in it afterwards and conveyed to the site of dissection. Given the distance from the Town Moor or Westgate gallows to the

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<sup>599</sup> *Newcastle Courant*, 24th November, 1781.

<sup>600</sup> Cregan, 'Edward Ravenscroft's The Anatomist', p.20.

<sup>601</sup> 'Last Speech and Dying Words of George, a Blacksmith of Southowram, Executed at Tyburn', Document ID: 101468. North Calderdale Library, From Weaver to Web. Accessed 15<sup>th</sup> August 2017. <https://www.calderdale.gov.uk/wtw/search/controlservlet?PageId=Detail&DocId=101468>

<sup>602</sup> *Newcastle Courant*, 20th March, 1762.

<sup>603</sup> Cregan, 'The Anatomist', p. 19.



Barber Surgeons' Hall, approximately one and a half to two miles, it is safe to say this mode of transportation would have sufficed. Similarly, in Durham the proximity of both White Smocks and the later Infirmary, to Dryburn and Durham Gaol respectively would have meant similar transportation was feasible. In the few instances where containment of the corpse is recorded, as was the case at Thomas Clarke's in 1831, we get an insight into the transport for the body, reports noting that following his hanging he was conveyed 'in a shell' to the Durham Infirmary where his body was 'given to the surgeons.'<sup>604</sup>

### Seeing dissections done: Public or private punishment?

One of the major advances in recent scholarship surrounding post-mortem dissection has been the detailed work done to locate both the crowd for dissections and the organisation of the spectacle. Of the limited early work done in the North East, the assertion had been that dissections had 'wholly male audiences' largely comprising members of the medical community and 'juniors and sundry gentlemen of the town.'<sup>605</sup> Whilst this may be true of the criminal dissection proper, Hurren's recent path-breaking national study has uncovered a far more complex and multi-layered system of audience access and presentation that brings these assertions into question.<sup>606</sup> In the case of Newcastle, the relatively public nature of the Barber Surgeons' Hall is clear and quantifiably not only reserved to the men, from early eighteenth-century accounts. Indeed, Celia Fiennes described the interior of the Barber Surgeons in great detail following her visit,

There were two bodyes that had been anatomised one the bones were fastened with wires the other had had the flesh boiled off and so some of ye Ligeament remained and dried with it, and so the parts were held together by its own muscles and sinews that were dried with it. Over this was another roome in which was the skin of a man that was taken off after he was dead, and dressed, and so

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<sup>604</sup> Richardson, *Table Book*, Volume 4, p.67. Accessed online 17<sup>th</sup> November, 2017. <https://books.google.co.uk/books?id=7BgHAAAAQAAJ&>; *An Account of the Trial of Thos. Clarke For the Wilful Murder of Mary Ann Westerhope, At Sherborne Water Mill, near Durham, on Sunday Afternoon, 8<sup>th</sup> Day of August, 1830* (Newcastle: Douglas, n.d). NCL Local Broadside (L.029.3).

<sup>605</sup> Morgan and Rushton, *Rogues, Thieves*, p. 118, 151.

<sup>606</sup> Hurren, *Dissection*.

was stuffed-the body and limbs. It Look'd and felt like a sort of parchment.<sup>607</sup>

Fiennes' detailing of both the look and feel of the skin of a stuffed body would suggest that these were freely accessible public exhibits. It would appear then that prior to the Murder Act, the Barber Surgeons' Hall of Newcastle was far from a closed and clandestine operation, shunning public access for fear of opprobrium. Indeed, further testament to its place as a public building appears after the Murder Act. In the accounts of the Barber Surgeons the details of a meeting in February of 1785 are included showing that the stewards allowed Mr Banks, a dancing master, to let the hall for 'not less than £8 per annum' for the purposes of a 'dancing School.' Similarly in March of 1820, one of the leading surgeons, Mr John Fife, proposed that 'a company of Ladies forming a Bible Society be allowed to meet in the hall on their paying 10/6 on each meeting.'<sup>608</sup> Similarly, the Surgeons' Hall would often advertise anatomical lectures as was the case in the *Newcastle Courant* of 1758, when 'A course of ANATOMICAL and CHIRCHURGICAL LECTURES' were advertised with tickets 'a Guinea each.'<sup>609</sup>

What is then apparent, as identified by Hurren nationally, is that different access was allowed to different people at different times. In short, the dissection was not a singular event. Where the widest audience was undoubtedly gained was when the bodies of the condemned were put on public show within Surgeon's Hall prior to later ticketed lectures. The *Northampton Mercury*, following the execution of Charles Smith in 1817, hinted at the popularity of these open exhibits of the body, prior to lectures commencing, reporting that

His body after hanging upwards of an hour, was cut down and carried to Surgeon's Hall for Dissection, where numbers of persons assembled on that and every succeeding day during the last week to view its remains.<sup>610</sup>

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<sup>607</sup> Fiennes, *Diary*, pp. 177-178.

<sup>608</sup> Barber Surgeons Minutes 1778-1845, TWAM, GU/BS/2/3.

<sup>609</sup> *Newcastle Courant*, 18<sup>th</sup> February, 1758. The lectures were undertaken by Richard Lambert, 'Surgeon to the Infirmary.' It is not clear what bodies were to be used for demonstration as the last execution with a post-mortem punishment in Newcastle or Northumberland had been four years hence, Dorothy Gatenby 1754.

<sup>610</sup> *Northampton Mercury*, December 20<sup>th</sup> 1817.

In his diary, apprentice surgeon Thomas Giordani Wright, recorded how, prior to anatomical lectures on Jane Jameson, in 1829, 'the body will I suppose be exposed to public gaze for a few days.'<sup>611</sup> In a rare record from the Barber Surgeons' minutes of a dissection we gain an insight into the purpose of this open and free viewing. The minute books expressly stated agreement amongst the members of the Guild that 'the body of Jane Jamieson be open to the 'identification/inspection of the public.'<sup>612</sup> The 'identification' and 'inspection' of the minute book entry speaks to the wider opprobrium and public fear of the work of the surgeons and general mistrust of their practice. Further testament to this can be seen in Sykes' *Local Records* in which he detailed that on the day of execution, following her hanging, Jameson's body was taken to the Barber Surgeons and placed in 'the piazza on the ground floor' and exhibited 'with the clothes on as cut down.'<sup>613</sup> In essence then this first public viewing was as much about the public acknowledging that the sentence had been enacted and on the correct person. In some instances this public access happened elsewhere, following the execution of Thomas Clare at Westgate in 1805, a later history recorded that his body was 'afterwards exposed at the Moot Hall.'<sup>614</sup> As a prisoner of Northumberland, Clare was tried and sentenced to death at the Moot Hall and so in one sense his post-mortem presentation there would provide a logical and somewhat circular conclusion to his life. However, there is no evidence of this practice elsewhere in the region, although as Hurren has identified of wider national practice the 'open space at the front of Assizes courts' was sometimes used for post-mortem presentation.<sup>615</sup>

The costs of entry could often dictate who attended. Whilst the lectures themselves were 'free to surgeons', the cost of viewing Jamieson's dissection proper was charged at '10/6' for the full anatomical lectures and '2/6' for an individual one to the wider public.<sup>616</sup> These were not inconsiderable sums and naturally would have precluded a lot of the lower classes. However, testament to their popularity can

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<sup>611</sup> Johnson and Wright, *Diary*, p. 293

<sup>612</sup> TWAM, [GU.BS/2/3](#).

<sup>613</sup> Sykes, *Local Records Volume 2*, p. 245.

<sup>614</sup> As a prisoner of Northumberland Clare was tried and sentenced to death at the Moot Hall. It would appear to be an unprecedented act in the region. *Newcastle Courant*, 17<sup>th</sup> August, 1805.

<sup>615</sup> Hurren, *Dissecting*, p. 24.

<sup>616</sup> Johnson and Wright, *Diary*, p. 293

arguably be seen in an advert in the *Newcastle Courant* for Jane Jameson's execution, which detailed that the costs were for the 'sake of preserving order and defraying necessary expenses.'<sup>617</sup> Whilst the architecture of the Barber Surgeons would have elevated a lot of the pressure of a crowd, Hurren has noted numerous instances in smaller regional dispensaries where overcrowding was common. In one account Dr William St Clare noted how, performing dissections at a local dispensary, he often felt 'squeezed to a jelly' by the assembled crowd.<sup>618</sup>

In the case of Jane Jamieson's 1829 execution and subsequent dissection we are lucky enough to have a surviving diary from an apprentice surgeon, present at her anatomisation. Wright was acutely aware of the popular opprobrium surrounding his work and seemed to relish it. In one entry he detailed his desire to become an anatomical specimen himself after death and stated, 'I can indeed contemplate with perfect satisfaction the idea of being stuck in a glass case – the terror of young ladies and little boys – the admiration and study of professors.' Giordani Wright was apprenticed to Mr McIntyre of Newcastle between 1824 and 1829 and took residence with McIntyre in the centre of Newcastle. Indeed, his dwellings were so central that he had to actively avoid seeing the execution procession for Jane Jamieson pass his window, stating that he had 'not the curiosity to join the assembled thousands.' In a moment of possible black humour Wright makes clear that he will see her shortly anyway, stating that 'If the latter part of the sentence be correctly reported. I shall most likely partake of the benefits accruing therefrom.' Interestingly, whilst the idea of viewing the execution procession was seemingly beneath him, the trial had not been and it was only owing to 'the crowded court' that he had not gained access.<sup>619</sup>

Wright's diaries and recorded private thoughts on the dissection of Jane Jamieson are perhaps the most revealing source on the social background of those in attendance at these events. They suggest that whilst the pitch and tone of the lectures was aimed at a much wider audience than simply members of the medical

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<sup>617</sup> *Newcastle Courant*, March 14<sup>th</sup>, 1829.

<sup>618</sup> Hurren, *Dissecting*, p. 193 citing Lancaster Record Office, MSS, DDWh/4/99, Whittaker of Simonstone.

<sup>619</sup> TWAM DX 47/1; Wright and Johnson, *Diary*, p. 292.

profession, the audience was small and predominantly professionals.

They may be very useful to the tyros\* of the profession and highly interesting to a general audience but they do not contain any information as *anatomical* lectures...The audience altogether might be about 50 of whom almost one third were non professionals.<sup>620</sup>

The 'non-professionals' or paying audience that Wright speaks of may well be the very same group referred to in an account of a much earlier dissection, that of George Stewart in 1764. A description in the *Newcastle Courant*, four days after his execution, detailed those in attendance at a lecture on his body as 'the young gentlemen of the profession, and a good many others of taste and speculation.'<sup>621</sup> The newspaper goes on to state that the lectures were to the 'great edification of all present.'<sup>622</sup> Similarly, in a rare surviving record of a dissection undertaken at Durham, that of John Winship in 1785, the report noted that 'his body was afterwards opened by Mr Wilkinson of Sunderland, who in the presence of many Gentlemen of the Faculty, delivered a lecture on the contents.'<sup>623</sup>

Of the limited surviving examples of what was undertaken in these anatomical lectures we see some similarities in the subjects covered across the region. Giordani Wright noted of Jameson's dissection that lectures were given on, amongst other things, the brain and 'its parts and structure.'<sup>624</sup> Likewise, following the 1805 execution at Durham of John Winship the *Newcastle Courant* noted lectures on his 'cranium' and gave further detailed coverage of the subjects to the 'gentlemen of the faculty'.

of the...Thorax and Abdomen; on which occasion two worms were extracted from the intestines, and the doctrine of the later Mr. Hewson, F.R.S. was demonstrated, that, in

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<sup>620</sup> Wright was not enamored of the lecturer, Mr. John Fife's, 'deliberate and slow' style of delivery, noting that the lectures might easily be 'compressed into one third or a quarter of the time it occupied'. This may speak as much to the desire of the Barber Surgeon's to maximise profit from a fuller and longer course. Wright and Johnson, *Diary* p, 299.

<sup>621</sup> *Newcastle Chronicle*, September 1<sup>st</sup>, 1764.

<sup>622</sup> *Newcastle Chronicle*, 1<sup>st</sup> September, 1764.; p.2 Historian Sykes, detailed the surgeons who performed the dissection and lectures as Mr. Lambert, Mr. Gibson, Mr. Tyzack, and Mr. Smith. Sykes, *Local records Volume 1*, p. 245.

<sup>623</sup> *Newcastle Courant*, 30<sup>th</sup> July, 1785.

<sup>624</sup> Wright and Johnson, *Diary*, p. 293.

executions of this kind, death is not produced, as had been generally supposed, by an extravation of blood, occasioned by the rupture of the vessels of the brain, but by suffocation; as in the case of drowning. The whole of the internal parts were found in a very sound state, and exhibited great marks of longevity.<sup>625</sup>

In some instances, the results of post-mortem dissection appear to have been of particular interest to the wider public regarding the relative innocence of the condemned. Reporting on the dissection of Margaret Tinkler at Durham in 1781 the *Newcastle Courant* recorded that ‘two long black double wire pins’ were found in her stomach and noted that the opinion of the surgeon, Mr Smith, was that she had ‘swallowed those pins many days before her execution to destroy her life.’ In testament to the popular desire to know the full details, the paper stated,

the public will judge of this true recital: but a more particular account of her confession, and the observations made upon dissection, will, we are assured be soon given to the public.<sup>626</sup>

However, where there are similarities in some of the subjects lectured upon, there is clear disparity in the length of time which the bodies of criminals were in the possession of the surgeons. In the few examples we have of Newcastle, most notably Jane Jameson’s dissection, it is apparent that the body was the subject of public viewing and detailed lectures for a number of weeks.<sup>627</sup> In Durham, however, it would appear that the undertaking of dissection was far quicker and that prolonged public displays were vanishingly rare. Reporting on the execution of Robert Peat on Friday 9<sup>th</sup> August 1822, the *Durham County Advertiser* detailed that ‘the body was cut down and removed to the Infirmary for dissection; and on Monday evening it was

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<sup>625</sup> *Newcastle Courant*, 30<sup>th</sup> July, 1785.

<sup>626</sup> Tinkler had declared herself pregnant to ‘prolong her life’ and had even sent a petition to Judge Nares in London ‘to which no answer arrived’ before her execution. *Caledonian Mercury*, 10<sup>th</sup> December, 1781. The *Newcastle Courant* reported that on examination by the surgeons ‘it was found she was not.’ Tinkler, a midwife, had been sentenced for her involvement in the ‘commending certain means to destroy an infant’ which led to the death of the mother. On leaving the gaol for her execution she is reported to have told the attendant clergyman and another surgeon, Mr Smith, that she had ‘only recommended the means, but that the act itself was done by the deceased woman’. *Newcastle Courant*, 24<sup>th</sup> November, 1781.

<sup>627</sup> Wright’s diary entry on Wednesday 18<sup>th</sup> March noted that lectures ended on her body on the following Monday (23<sup>rd</sup>). Jameson was executed on the 7<sup>th</sup> March, which means that her body, was in the possession of the Barber Surgeons for at least 16<sup>th</sup> days. Wright and Johnson, *Diary*, p. 299.

interred.<sup>628</sup> Similarly, following his execution on Monday 28<sup>th</sup> February, 1831, Thomas Clark's body was removed to the infirmary and '*partially* dissected' on Tuesday morning; after which he was given to his friends for interment.<sup>629</sup>

Durham's practices may well have been more indicative of what King has noted in some remote, rural locations, where surgeons 'without statutory justification' returned the bodies to families for interment after a few 'token incisions.'<sup>630</sup>

## Post-mortem shame

As eminent historian J. M. Beattie made clear, unlike the physical torture of the 'wheel-breaker or the castrator', punishments such as dissection were aimed as much at the family and closest friends of the offender as the offender themselves by denying 'the customary forms of bereavement.'<sup>631</sup> If the most simplistic gauge of the Act's success was to create a greater dread around the criminal law then it had the desired effect. These punishments were often more greatly feared than the execution itself. At the 1829 send-off of Jane Jameson reports noted that in her final moments, she asked the attendant Reverend Green a 'question about her body.' The Reverend suggested she was 'not to care about her body but about her soul.'<sup>632</sup> She was not alone in placing the dread of dissection over the fear of hanging as one ballad printed for her execution attested to.

"O pity my unhappy state,  
And now take warning by my fate,  
My lifeless body must be torn  
By sad dissection's dreadful arm."<sup>633</sup>

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<sup>628</sup> *Durham County Advertiser*, 17<sup>th</sup> August, 1822; *An Account of the Crime, Trial and Execution of Robert Peat* (Newcastle: Marshall, n.d.) NCL, *Local Broadsides 1813-1834*.

<sup>629</sup> *Durham County Advertiser*, 4<sup>th</sup> March, 1831. Clark was the final person to suffer the punishment in the North East.

<sup>630</sup> The reasoning would be less clear though as King mainly identified this practice in 'rural areas where county hospitals had yet to be established.' However, the examples given in Durham were in 1820's and 1830's, almost half a century after the formation of the Infirmary. King, *Punishing*, p. 82.

<sup>631</sup> Beattie, *Crime and the Courts in England 1660-1800*, p. 526.

<sup>632</sup> *Account of the Execution of Jane Jamieson, Who Was Convicted of the Wilful Murder of His Mother, Margaret Jamieson, at the Assizes for Newcastle, on Thursday, March 5th, 1829, and Suffered on the Scaffold, on Saturday, March 7* (Newcastle: W. Boag, n.d.), JJC, Harding B 9/2 (77)

<sup>633</sup> *Lamentation of Jane Jamieson, who was executed at Newcastle, on Saturday, the 7th day of March, 1829, for the murder of her own mother* (Gateshead: Stephenson, n.d.) University of Oxford, Bodleian Library, Broadside Ballads [Harding B 14\(227\)](#).

Further testament to its power can be seen in the numerous failed passages of bills that attempted to widen the punishment of dissection to crimes other than murder, failing in large part due to the fear that their extension would cause widespread opprobrium. The effect of its wider shame is apparent in records for the North East. In the case of Dorothy Gatenby, the first woman dissected under the terms of the Murder Act, a later history of the region noted the following,

‘Her two sons, painfully affected by the disgrace brought on the family, drowned themselves, and her daughter, to avoid public odium, left Newcastle and went to a remote part of the kingdom.’<sup>634</sup>

It is worthy of note that in the records of the Barber Surgeons, several months after Gatenby’s dissection, an entry details that Mr Halliwell, one of the four officiating surgeons on her body, is to ‘have the bones of Dorothy Gatenby.’<sup>635</sup> Unlike instances highlighted in Durham earlier, it would appear that the additional shame of having no body to bury frequently left its mark. In some cases the bodies themselves were subject to prolonged presentation, even becoming exhibits at the Surgeons’ Hall, as was the case with Thomas Watson, executed at Newcastle’s Westgate in 1790.<sup>636</sup> A later history of the region recorded that ‘the body was sent to the surgeons hall for dissection where the skeleton now remains.’<sup>637</sup>

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<sup>634</sup> F. C. Pybus, ‘The Company of Barber Surgeons and Tallow Chandlers of Newcastle-on-Tyne,’ *Proceedings of the Royal Society of Medicine* 22, no. 3 (January 1929): 291. Earlier studies have noted the limited prosecutions of infanticide but argued that in Gatenby’s case her serial offending may have been her undoing, for more on the case see Rushton & Morgan, *Rogues, Thieves*, p. 116.

<sup>635</sup> Barber Surgeons minutes including accounts, lists of stewards, members and apprenticeships, cess payments etc. 3<sup>rd</sup> January 1686 – 3<sup>rd</sup> February 1778. TWAM, GU/BS/2/2. p. 459.

<sup>636</sup> The intended effect of such a public punishment on the attendant audience at Watson’s trial appears to not have been received by all. Jane Stephenson was caught ‘picking pockets’ and ‘as soon as the trial of Watson ended’ was sentenced to seven years transportation. *Newcastle Courant*, 7<sup>th</sup> August, 1790.

<sup>637</sup> Sykes, *Local Records*, p. 356. It is clear from the aforementioned entries from Celia Fiennes’ diaries that the practice of public corpse presentation had been a feature of the Barber Surgeons for centuries. However, it is worth noting that this volume of Sykes’ records was published in 1833, at which point later and more detailed records of the Surgeon’s Hall stated that ‘In 1830, their Hall was vacant. The Company has been maintained but may be said to be almost “in articulo mortis.” It consists at present of five members, two stewards and three ordinary members. It has no Hall—the old Barber Surgeons’ Hall is now a Church School. Its meeting, still held on Trinity Monday, takes place in the Nag’s Head Hotel, where even the festival dinner has been abandoned for lack of funds.’ Pybus, *Proceedings*, p. 296.



The bequeathing of Dorothy Gatenby's bones was in line with a wider practice of the trading of body parts of the executed.<sup>638</sup> This was not uncommon in the region and by no means exclusive to the female form. In an 1856 copy of the periodical *Notes and Queries* a 'well known local collector' was auctioning parts of his library, in amongst the lots was the following. 'Lot 10. A most curious and unique Book, being the particulars of the Trial and Execution of Charles Smith, who was hanged at Newcastle for Murder, containing a piece of his skin tanned into leather for the purpose.' Robert S. Salmon. Newcastle-on-Tyne.' A macabre curio that is, at this very point in time, still in the possession of Newcastle Central Library. The same publication lists, below the advert for the Smith book, a copy of a book at the Bury St Edmund's library bound with a 'tanned piece of the skin of Corder the murderer.'<sup>639</sup> Corder's *Red Barn Murder* was one of a number which helped forge a 'huge business in souvenirs' that created macabre memorialisations of all aspects of crime, from pottery reproductions of the protagonists to crudely rendered scenes of the crime.<sup>640</sup> All of which combined to create a 'series of afterlives in popular culture' for the body of the condemned. Indeed, in his work on the red barn murders, McCorristine has argued that the fact that murderer William Corder's body parts are still open to public view in the Moyse's Hall Museum in Bury St Edmunds, is a prime example of 'how criminal bodies have historically been commoditised in order to 'curate' crime;' a prurient fascination and dubious trade that continues in auction houses and on Ebay.<sup>641</sup>

Trinkets and accoutrements from the bodies of the executed were sought after relics. In Charles Smith's case, the particular practice of binding books in human skin,

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<sup>638</sup> For a detailed history of the continuing appeal of the criminal corpse across the centuries see O. Davies and F. Matteoni, "A virtue beyond all medicine": The Hanged Man's Hand, Gallows Tradition and Healing in Eighteenth- and Nineteenth-century England" *Social History of Medicine* 28 (4) (November 2015), pp. 686–705; R. Penfold-Mounce, 'Consuming criminal corpses: Fascination with the dead criminal body' *Mortality* 15 (3), pp. 251–265; S. Tarlow, 'Curious afterlives: the enduring appeal of the criminal corpse', *Mortality* 21 (3) (2016), pp. 210–228.

<sup>639</sup> *Notes and Queries* (Oxford University Press, 1856), p. 157. *Ibid.*

<sup>640</sup> 'The Trial, at Length, of William Corder, Convicted of the Murder of Maria Marten,' *The British Library*, accessed May 5, 2015, <http://www.bl.uk/collection-items/the-trial-at-length-of-william-corder-convicted-of-the-murder-of-maria-marten>.

<sup>641</sup> S. McCorristine, 'Society's Obsession with Criminal Celebrities and 'murderabilia' University of Leicester Blog, Accessed May 5, 2015, <http://www2.le.ac.uk/offices/press/press-releases/2014/august/society2019s-obsession-with-criminal-celebrities-and-2018murderabilia2019-explored>; 'The Dark Value of Criminal Bodies: Context, Consent, and the Disturbing Sale of John Parker's Skull,' *Journal of Conservation and Museum Studies* 13 (1) (February, 2015), pp.

known as Anthropodermic Bibliopegy, was a comparatively rare practice, reaching the height of its popularity in the nineteenth century, but was part of a long tradition of investing the criminal corpse with potency and intrigue in both life and death. Given the lack of surviving instances of skin bound books today, it is noteworthy how many are linked to crime and execution. One such example is Bristol's M museum's copy of 18-year-old John Horwood's case papers, executed in 1821 for the murder of Eliza Balsum. which are bound in his own skin.<sup>642</sup> The macabre binding was at the behest of the surgeon who dissected him, Richard Smith, and the case papers were his own personal copy.<sup>643</sup> Indeed, Horwood's body was only finally laid to rest in 2011 following a campaign by his descendants: at one time his skeleton was held by the Bristol Royal Infirmary and later displayed at Bristol University with the noose still around his neck.<sup>644</sup>

## **Anatomy Act**

The punishment of dissection was finally removed from the legal arsenal by the 1832 Anatomy Act. To Richardson 'what had for generations been a feared and hated punishment for murder became one for poverty', a sentiment concurred with by many at the time.<sup>645</sup> Reporting on the failure of an earlier bill, one correspondent to the *Newcastle Magazine* opined that 'if the bill had passed into law, it would have caused many a poor person to prefer dying in a ditch to going to the hospital.'<sup>646</sup> Retention of the prejudice and fear towards surgeons and dissection long outlasted the Act itself. In his history of the Durham Medical School Writing, formed in 1832, Embleton highlighted that 'the nascent School had great difficulties to contend with; the lecturers having to teach themselves, to encounter old prejudices among the public, who in those days held dissection in horror.'<sup>647</sup> Similarly, hopes that the Anatomy Act had put

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<sup>642</sup> G. Boyle, 'Murder Most Horrid,' *History Extra*. Accessed May 5, 2015, <http://www.historyextra.com/horwood> .

<sup>643</sup> 'The Macabre World of Books Bound in Human Skin,' *BBC News*. Accessed May 5th, 2015. <http://www.bbc.co.uk/news/magazine-27903742>

<sup>644</sup> C. Le Marechal, 'Family of man hanged in Bristol in 1821 seek burial' *BBC News*, 8<sup>th</sup> November 2010. Accessed online 17<sup>th</sup> September 2018. <https://www.bbc.co.uk/news/uk-england-bristol-11711858>

<sup>645</sup> Richardson, *Death*, p. xv.

<sup>646</sup> 'The Anatomy Bill', *The Newcastle Magazine* 8 (8) (August, 2019) p. 355

<sup>647</sup> D. Embleton, *The Durham College of Medicine at Newcastle-Upon-Tyne, for forty years, from 1832-1872* (Newcastle Upon Tyne: Reid Sons & Co., 1890), p.13. 'In 1832, acts of Parliament founded the University of Durham and modernised the scope of medical education in the UK. Two years later,

paid to bodysnatching, were soon undermined by the murky realities of body provision and the legalities of 'claiming' in the years following.<sup>648</sup> In 1841, great consternation occurred in Newcastle following the disputed 'claiming' of the body of Sophia Quin, mother to Rosanna Rox, by the Newcastle Medical School. Following provisions made with the Relieving Officer, Mr Heslop, Rox had been under the impression that a coffin was due to be provided and burial undertaken at the dissenter's burial ground of Ballast Hills. However, no coffin came and instead Rox found the body being taken by the janitor of the Medical School, believing it to be 'unclaimed'. Rox and a number of fellow Irish friends, raised the alarm and found a policeman who met them at the Barber Surgeons' Hall entrance. The Officer was denied access, at which point the Mayor was called and demanded access to the body. Upon entering, Sophia Quin's coffin lid was found propped against a wall and her body was found 'immersed in near boiling water', at which sight Rox fainted.<sup>649</sup> Such was the furore around the case that it received national newspaper attention and was the focus of a detailed article in *The Lancet*.<sup>650</sup> The eventual cost to the Barber Surgeons, following fines and legal fees from the resulting trial amount to £100, an amount the surgeons could 'ill afford'.<sup>651</sup>

## Conclusion

Dissection in the North East between 1752-1832, was largely in line with national figures, accounting as it did for almost 90% of post death provisions on murder charges. Its predominance over the gibbet as a judicial punishment was largely the result of medical necessity, owing to a paucity of cadavers. Furthermore, unlike the

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the Newcastle upon Tyne School of Medicine and Surgery was established. In 1870, the organisation became known as The Durham University College of Medicine - Newcastle upon Tyne and, in 1934, a further Act established King's College in Newcastle as a separate division of Durham University. In 1963 the University of Newcastle upon Tyne was established' Accessed online 17<sup>th</sup> January, 2019. <https://www.ncl.ac.uk/medicalsciences/about/history/>

<sup>648</sup> For a detailed examination of the ambiguities and often 'intentionally obscure' definitions surrounding the 'claiming' of bodies after the Anatomy Act see Richardson, *Death*, pp. 121-129. For a regional assessment of the effect of 'claiming' on body supply see F. Hutton, 'The working of the 1832 Anatomy Act in Oxford and Manchester', *Family & Community History*, 9 (2) (2006), pp. 125-139.

<sup>649</sup> Quin's body was eventually returned to its coffin and returned to the house where it was 'waked' and subsequently 'buried' the next day at Ballast Hills'. *Newcastle Courant*, 1<sup>st</sup> January, 1841.

<sup>650</sup> 'The Anatomy Act at Newcastle Upon Tyne' in *The Lancet London: A Journal of British and Foreign Medicine Volume 1* (London: Elsevier, 1841), pp. 868-868. Accessed online 17<sup>th</sup> January, 2018. <https://books.google.co.uk/books?id=NRZAAAAcAAJ&dq>

<sup>651</sup> In his history of the Durham Medical School Embleton recorded that 'the janitor and three of the bearers, the fourth having disappeared, were fined twenty pounds each, which sums, with law expenses, counsels' fess, &c., amount to about £100. Embleton, *History of the Medical School*, p. 23.

gibbet it was a punishment with a limited expense owing to recoverable costs from, amongst other things, audience admission. Although a punishment for both men and women, it was predominantly suffered by men, women accounting for roughly one quarter of cases in the period a figure in line with recent studies of Scotland. Whilst not having the relative permanence of a punishment such as the gibbet, dissection was still a greatly feared one and often caused a deep sense of social rupture and shame to the family and friends of those who suffered it, long after the body had been destroyed.

Although four dissection sentences were passed on prisoners of Northumberland in the period covered, in all cases their bodies were handed to the Barber Surgeons at Newcastle. This would appear in line with practices recently identified in Scotland, in which the medical predominance of Edinburgh meant it laid claim to bodies executed far further afield. One further point worthy of note is that in the two instances of extraordinary procedure with bodies, the condemned were both prisoners of Northumberland. Thomas Watson's post-mortem exhibition at the Barber Surgeons' Hall and Thomas Clare's post-mortem presentation at the Moot Hall, may have only been possible owing to the relative distance from the immediate region of the crime. Despite its relatively limited capacity for undertaking dissections, Durham accounted for over half of the sentences applied in this period. This appears in line with earlier findings in chapters two and three regarding its higher capital sentencing rate. Despite its higher incidence of dissection, it appears that the facilities available were limited and sporadic, particularly in the eighteenth century. In numerous instances it would appear that the dissections undertaken there were largely 'token' in gesture and often led to the body, despite no legal jurisdiction to do so, being handed back to the relatives. In administering dissections at the Barber Surgeons' Hall then it is apparent that Newcastle was far closer to London and Edinburgh than neighbouring regions. Similarly, of the limited reports of dissection in Newcastle it is apparent that the bodies were demonstrated upon for far longer and in much greater detail than in Durham.

Where then does the punishment of dissection sit in the broader debates about the changing nature of punishment? Firstly, we must ask, how 'public' was this punishment in the period sampled. In establishing the experience of dissection in

neighbouring counties it is important to understand the headline figures hide a more complicated picture, most notably in Newcastle. Owing in large part to its relative size in comparison with Durham and Northumberland its dissection sentences would appear to present a county where the punishment was minimally applied. In fact, as with eighteenth and early nineteenth century executions undertaken at Newcastle's Westgate, the use of Newcastle's Barber Surgeon's Hall for Northumberland's dissection sentences arguably meant that the punishment was more readily experienced by the public in Newcastle than in the much larger counties sampled. Furthermore, the limited public nature of dissections at Durham meant that in reality Newcastle was far more a centre for this presentation of post-mortem punishment than the assize figures alone allow for. This is then further complicated by how avowedly public these spectacles were. Unlike the lengthy spectacles and ticketed entry of dissections in Newcastle, in Durham the spectacles appear rarely if ever to have been avowedly public or particularly lengthy or demonstrative. None took place in Northumberland, so a resident of Durham or Northumberland may well never have witnessed a body presented for dissection in this period; whilst, numerous and lengthy presentations of criminal bodies were made in Newcastle in the period. In many ways then the publicness of post-mortem punishment in this period was in some counties, much like executions, 'semi-public' or 'semi-private'.

Finally, in line with wider national surveys, the audiences to dissection were far more multi-faceted and access more tiered than earlier accounts of the North East region have allowed for. It is apparent that members of the lower orders often came in large numbers to view the body of the condemned in the days immediately following execution. However, it would appear that the audience for the lectures provided on the body, owing in large part to fees levied, were viewed by surgeons and gentlemen of 'taste': for this read relative wealth. In this sense then the dissection was a far more multi-layered and multi-faceted experience of justice than its post-mortem partner, the gibbet.

## Chapter Five:

### **‘A Warning for the Future and a Memento of the Past’: Hanging in Chains in the North East of England 1752-1834**

Hadst thou robbed the nation of millions, instead of robbing the mail, and pilfering a few shillings from a testy old maid; thou hadst not been hanging a spectacle to passengers, and a prey to crows.<sup>652</sup>

The Body was then hoisted up and secured, and left as a warning for the future, and a memento of the past.<sup>653</sup>

A Victorian Disneyland.<sup>654</sup>

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<sup>652</sup> J. Murray, *The Travels of the Imagination; a True Journey from Newcastle to London in a Stage-Coach: With Observations upon the Metropolis* (J. Bumpus, 1828), p. 31

<sup>653</sup> *An Account of the Gibbeting of Wm. Jobling, at Jarrow Slake NCL, RTC.*

<sup>654</sup> Bob Morgan, Middle Hill Renewables, on Winter's Gibbet. *Northumberland Gazette*, 11th August, 2011. Accessed 13th September, 2018. <https://www.northumberlandgazette.co.uk/news/fury-at-victorian-disneyland-slur-1-3667657>

In the August of 1828 a letter appeared in the *Newcastle Magazine* regarding the work of native poet, George Pickering. Written by local historian John Sykes, the missive intended to shine a light on a few of Pickering's poems that had escaped a recent, posthumously published, compendium of his work. Amongst the works published was one Pickering had created as the result of a drunken wager. Whilst drinking with regular 'bottle friend', silversmith William Stalker, at the popular Newcastle drinking hole Mrs Elliott's Alehouse, Pickering thought it in good jest to write his friend an epitaph. The poem opened with the following stanza.

The measure of his sins at last,  
Replete here rattled in the blast,  
A careless everlasting talker,  
Who said his name was William Stalker.<sup>655</sup>

The 'rattling in the blast' is a reference to Stalker's body encaged in a gibbet, being buffeted from its lofty height by the prevailing winds. Entitled the *Epitaph on Wm. Stalker*, Pickering's poem is a fictionalised account of his friend suffering the ultimate punishment of the law, being hanged and gibbeted.

In this chapter, the punishment of gibbeting or Hanging in Chains and its application in the North East's penal arsenal will be assessed. The first section will seek to place the punishment in its proper historical context and then consider its application in the North East between 1752-1832.<sup>656</sup> It will analyse who suffered the punishment and why, in the aftermath of the Murder Act. Owing to the paucity of cases in the period, three uses of the punishment in the region sampled, any perceived patterns can only be pointed to tentatively. However, it will be contended that of the limited cases available they all shared a very real or perceived attack on the judiciary which may well have motivated the harshness of the sentencing. Furthermore, it will be shown that in line with national studies, the punishment was an exclusively male one. The

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<sup>655</sup> Sykes noted that the collection of Pickering and Bedingfield's poetry, published in Newcastle in 1815, had missed this effort. It further noted that the anthology was dedicated to Walter Scott, a long-term fan who had committed Pickering's *Keen blows the wind o'er Donocht-head* to memory. J. Sykes, 'Unpublished Remains of George Pickering', *The Newcastle Magazine*, 7 (8), (August 1828), p. 359.

<sup>656</sup> Although the punishment of Hanging in Chains remained a part of the legislative arsenal until 1834, it was never used after 1832. The final person to suffer this miserable fate was James Cook, executed at Leicester in August 1832. S. Tarlow, *The Golden and Ghoulish Age of the Gibbet in Britain*, (Palgrave Macmillan, 2017). p. 80.

second half of the chapter will go on to assess both the construction and location of the gibbet. It will argue firstly that the prohibitive costs involved in the construction of gibbets were key to their sparse use in the period. It will be shown that both the positioning and structural integrity of the gibbet gave them a permanency in the landscape and social memory far beyond that of the scaffold. Indeed, the relative longevity of the gibbet meant it had a much deeper and more lasting impact on both the social memory and topographic record than the gallows; one that far outlived the punishment itself. In many ways it was a permanence that undermined its punitive power, often making a martyr of a malefactor.

### **A punishment in context**

The punishment of Gibbeting or Hanging in Chains was the alternative penalty to dissection, provided in the penal arsenal of the 1752 Murder Act. It was a sanction deemed by some so brutal that, 'Edgar Allan Poe and the Spanish Inquisition could scarcely have been more fertile in devising means of human torture.'<sup>657</sup> The term "gibbet" was often used interchangeably to describe both the gallows used for execution and the gibbet itself. In Halifax a 'gibbet' stands to this day, a guillotine type structure that long predated Dr. Guillotin's now infamous attempts to spread the 'privilege' of decapitation beyond the ranks of the nobility.<sup>658</sup> Similarly, reports of sixteenth century Durham executions, sometimes referred to Dryburn as 'Gibbet Knowle' or 'Knoll' as in the case of the four seminary priests hanged, drawn and quartered in 1591.<sup>659</sup> For the purposes of this chapter though the term gibbet will be used exclusively to describe the structure in which an executed felon's body was subsequently displayed after death.

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<sup>657</sup> W. S, 'Andrew Mills' *Monthly Chronicle of North-Country Lore and Legend* 1 (2) (April, 1887), pp. 65-68.

<sup>658</sup> H. Lienhard, *The Engines of Our Ingenuity: An Engineer Looks at Technology and Culture* (New York: Oxford University Press, 2000), p. 150; For a detailed examination of the debate around the use of the guillotine see G Chamayou, 'The Debate over Severed Heads: Doctors, the Guillotine and the Anatomy of Consciousness in the Wake of the Terror', *Revue D'Histoire Des Sciences*, 61 (2) (2008), pp. 333. -365; 'Halifax Gibbet', accessed 7<sup>th</sup> December, 2018, <https://www.visitcalderdale.com/halifax-gibbet>;

<sup>659</sup> W. Page (ed.) *A History of the County of Durham: Volume 3* (London: Victoria County History, 1928). *British History Online*, accessed March 22, 2019, <https://www.british-history.ac.uk/vch/durham/vol3/pp29-53>



If sentenced to the post-mortem punishment of hanging in chains the body of an executed felon, after hanging the customary hour on the scaffold, would be removed and subsequently placed in a metal, more often than not iron, cage which would be hung from a large wooden post (often 20-30ft in height) on a prominent part of the landscape, often at or nearby the scene of the crime; a semi-permanent testament to the ends that awaited a life of malfeasance.

The punishment preceded the Murder Act of 1752 but, as with its counterpart dissection, became one of the mandatory punishments for murder from thenceforth. Writing at the end of the nineteenth century, Albert Hartshorne recognised both the gallows and the gibbet as 'the most ancient instruments of capital punishment in the world.'<sup>660</sup> Whilst such assertions are subject to debate, more recent studies have clearly shown that the punishment predated the Murder Act by many 'hundreds of years.' Indeed, its indelible linking with the Murder Act has somewhat unhelpfully coloured historians' understanding of its use, as recent work has shown that it was used more in the eve of the Murder Act than in any subsequent decade.<sup>661</sup>

In the North East there are several notable mentions of the gibbet being used prior to the Murder Act. One such is in 1693 in the case of Andrew Mills. Mills had been convicted for the brutal murder of three children, in their house near Ferryhill, County Durham. Much of the surviving reports of the case exist only in later nineteenth-century folklore accounts and as such are notably conflicting in parts. However, the brutally and aggravated nature of the crime is fully apparent in one contemporary report. In Jacob Bee's diary of the same year of the crime he detailed a 'sad, cruel murther (sic)' and the subsequent punishment of the offender, 'hanged in irons upon a gybett (sic), near Ferryhill' on the 15<sup>th</sup> day of August.<sup>662</sup> That Mills' case would be deemed suitable for gibbeting tallies with recent findings on Hanging in Chains in Scotland, where 'particular aggravations' were often the key to the punishment being

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<sup>660</sup> A. Hartshorne, *Hanging in Chains* (New York, 1893), p. vii. Accessed 17<sup>th</sup> March, 2017 <http://hdl.handle.net/2027/uc1.b000728168>

<sup>661</sup> Z. Dyndor, 'The Gibbet in the Landscape: Locating the Criminal Corpse in Mid-Eighteenth-Century England,' in *A Global History of Execution and the Criminal Corpse*, R. Ward (ed.) (Palgrave Macmillan, 2015), p. 103.

<sup>662</sup> Jacob Bee's Diary (1683) in *Six North Country Diaries*, J. C. Hodgson (ed.) (The Surtees Society, 1910), p. 191

adopted.<sup>663</sup> The brutality of the case in question and the ages of the victims may well have also been a mitigating factor.

In a later instance of its use, prior to the Murder Act, the reasoning for the sentence is less clear. In 1739, Michael Curry was found guilty of the murder of Robert Shearvel (Shevil), the landlord of the Three Horseshoes Inn at Hartley. Robert's wife, Isabel, was also indicted but Curry denied her having taken part in the affair and she was later acquitted, having been 'proved lunatic.'<sup>664</sup> Curry was found guilty and sentenced to be hanged at Newcastle's Westgate and then gibbeted within sight of the scene of the crime. What marks Curry's sentence out as odd is that he was hanged alongside a man who committed a remarkably similar crime yet received no additional punishment. The man in question was John Wilson, sentenced at the same Northumberland Assizes for the murder of Barbara Trumble of Donclay-Wood.<sup>665</sup> Trumble was a publican's wife. The only apparent divergence in the two cases is that Wilson was recorded as being able to 'remember nothing', presuming that his moment of madness must have been 'in the midst of a tumultuous drunken affray.'<sup>666</sup> Both men refused to speak on the scaffold but are recorded as having 'own'd the facts of which they suffered' leaving letters to Rev. Mr. Wilkinson acknowledging as much.<sup>667</sup> In spite of the remarkable similarities in the case, Curry suffered the additional punishment of gibbeting whilst Wilson's body was buried at St John's Churchyard.<sup>668</sup> One possibility is that Curry's crime may have suffered this additional punishment as he had killed his master, a form of petty treason.<sup>669</sup> Furthermore, given that we have no instances in the North East and very few nationally in which there was a double gibbeting, we can safely assume that the possibility of both men suffering the punishment would have been very unlikely. As it

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<sup>663</sup> R. E. Bennett, *Capital Punishment and the Criminal Corpse in Scotland 1740 to 1834*, (Palgrave Macmillan, 2017) pp. 187-213.

<sup>664</sup> Morgan and Rushton, *Rogues, Thieves*, p. 113.

<sup>665</sup> Curry ASSI 45/21/3/42; Wilson ASSI 45/21/3/180

<sup>666</sup> Sykes, *Local Records*, p. 157.

<sup>667</sup> *Newcastle Courant*, September 8<sup>th</sup>, 1739.

<sup>668</sup> Sykes, *Local Records*, p. 157.

<sup>669</sup> Studies of Early Modern England have noted the treatment of wives killing husbands and servants killing their masters as 'analogous to any threat to or assault on the sovereign', thus it was treated as Petty Treason. F. E. Dolan, *The Subordinate(s) Plot: Petty Treason and the Forms of Domestic Rebellion*, *Shakespeare Quarterly*, 43 (3) (Autumn, 1992), pp. 317-340. p. 317; M. Lockwood, 'From Treason to Homicide: Changing Conceptions of the Law of Petty Treason in Early Modern England', *The Journal of Legal History*, 34 (1) (2013), pp 31-49.

stood, Curry suffered further ignominy, whilst Wilson received the dignity of a church burial. Indeed, in one way Wilson's crime would appear the more shocking of the two, as his victim was a woman. Either way, as will be shown later in the chapter, Curry's gibbet became a prominent mark on the North East landscape (Curry's Point). It would appear that the point could just have easily been Wilson's.

### **Hanging in Chains after the Murder Act**

In the North East, between its entrenchment in the 1752 Murder Act and its removal from the penal arsenal in 1834, only three people suffered this cruellest of fates. As chapter four highlights there is a marked distinction in the frequency of its use in the period when compared to dissection. Although legislated as a punishment expressly for the crime of murder, unlike dissection, not all cases in the North East and the wider country were for the charge of murder. In the North East, whilst William Winter 1792 and William Jobling 1832 were gibbeted for murder, Robert Hazlitt, 1770, was Hung in Chains for robbing the mail.<sup>670</sup> This was not an uncommon occurrence as gibbeting was used for a selection of other crimes nationally. Indeed, just under a third (33%) of those who suffered the punishment of gibbeting had been charged with a crime less than murder.<sup>671</sup> Crimes that were punished included riot, arson, robbery (particularly robbery of the mail and highway robbery).<sup>672</sup>

Recent comprehensive national studies have shown that of the 1,151 felons capitally convicted for murder between 1752 and 1834 only 148 (13%) were Hung in Chains. This is against 79% who were dissected.<sup>673</sup> By comparison, in the North East, of the 76 people executed in the region between 1752-1834 only three (3.9%) were sentenced to be hung in chains. When broken down by crime, of the 76 people

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<sup>670</sup> Assize records noting the sentence named the condemned as 'Hazlitt otherwise William Hudson' however most newspaper reports and subsequent histories have split between Hazlitt, Hazlet or Hazlett. For the purposes of this chapter Hazlitt has been used. DURH 16/1

<sup>671</sup> This figure is based on Tarlow and Dyndor's figures for gibbeting sentences. They found that between 1752 and 1834 a total of 232 people were subjected to the punishment of gibbeting with 148 individuals being gibbeted for Murder and 75 for sentences other than Murder. S. Tarlow & Z. Dyndor, 'The Landscape of the Gibbet,' *Landscape History*, 36, (1) (January 2, 2015), p. 73.

<sup>672</sup> Previous studies have noted the high incidence of gibbeting for robbing the mail, citing pressure mounted by the Postmaster General to give these crimes an exemplary punishment. Tarlow & Dyndor, 'Landscape', p. 73; Morgan and Rushton, *Rogues, Thieves*, p. 149.

<sup>673</sup> The disparity in the two figures (i.e. the remaining 9%) is owing to 8% being pardoned and 1% having died in prison. *Ibid.*, p. 73.

executed, 26 of those were charged for murder, with only two (7.6%) people suffering the post-mortem punishment of the gibbet for the crime of murder. Whilst this is under the national average, what is clear is that, both regionally and nationally the use of the gibbet was markedly rare. Across the wider Northern Circuit, national studies have identified 18 instances of the gibbets use between 1750-1834, equivalent to 9% of the national total (199). Set against these figures the regions sampled here accounted for 16.6% of the gibbetings recorded on the Northern Circuit in this period and approximately 1.5% of the national incidence. As was the case with figures for execution, the predominant instances of the gibbets use on the Northern Circuit in this period were in the counties of Lancashire (six) and Yorkshire (seven).<sup>674</sup> Of the three instances of its use, two were undertaken in cases at the Durham Assizes (Hazlitt and Jobling) and one at the Northumberland Assizes (Winter). No gibbeting was ever ordered in this period at the Newcastle Assizes. As highlighted in chapter four elsewhere, this may well have been owing to the influence of Newcastle's established medical community and the desire for a steady supply of cadavers. It was clearly not for want of a suitable location, as the Town Moor, the regular site of execution for centuries, fitted perfectly the features more readily associated with earlier studies of gibbet locations; most notably its proximity to major thoroughfares and traditional administrative boundaries and visibility from great distances.<sup>675</sup>

## The gendered gibbet

Another central distinction between gibbeting and dissection as post-mortem punishments is their gendered nature, with recent national studies showing gibbeting to be an exclusively male sentence.<sup>676</sup> Indeed, as detailed in chapter four, in the case of William Winter all three of the executed party were originally sentenced to

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<sup>674</sup> National figures and county breakdowns have been drawn from Table 2.1 'The frequency of gibbetings by county and decade through England and Wales' in S. Tarlow, *The Golden and Ghoulish Age of the Gibbet*. Accessed online 12<sup>th</sup> May 2019 [https://link.springer.com/chapter/10.1057/978-1-137-60089-9\\_2#Tab1](https://link.springer.com/chapter/10.1057/978-1-137-60089-9_2#Tab1). In his wider study of the Northern Circuit Bentley identified a roughly two thirds, one third split in gibbeting charges for the crime of murder (62.5%) and for lesser crimes (37.5%); A split that would chime with the regions sampled here. Bentley, *Capital Punishment*, p. 38.

<sup>675</sup> Whyte, *Deviant dead*, pp. 24-39; Coolen, *Justice and awe*, pp. 762-779.

<sup>676</sup> S. Tarlow, 'The Technology of the Gibbet,' *International Journal of Historical Archaeology* 18 (4) (September, 2014), pp. 668-99.

dissection, but it was only Winter whose post-mortem sentence was later changed to hanging in chains – his two female accomplices suffering dissection instead.<sup>677</sup> Earlier studies have argued that this gendered distinction is arguably a by-product of the prevailing sentiment that ‘the natural modesty of the (female) sex’ forbade the ‘mangling of their bodies.’<sup>678</sup> The notion of a female body on display, encaged and subject to the brutal ravages of time was perhaps a step too far for the judiciary.<sup>679</sup> Furthermore, gibbeting’s role was almost entirely symbolic, whereas dissection doubled as a vital, practical remedy for a medical profession starved of cadavers for anatomical instruction.<sup>680</sup>

### Who was sentenced and why?

Unlike dissection, the region’s authorities were relatively slow on the uptake of Hanging in Chains following the 1752 Murder Act. Indeed, Michael Curry’s sentence in 1739 was to be the last of its kind in the North East for over 30 years, whilst the first person to suffer the punishment of dissection was sentenced in the year of the Murder Act itself. The first instance of gibbeting in this period was not until 1770. This ignominious prize went to Robert Hazlitt. Although it may be something of a fool’s errand to search for any definitive sentencing pattern with such limited applications of a punishment there is one marked commonality in all three cases, namely a very real or perceived attack on the judiciary or local magistracy. In all three instances the presiding judge or a member of the local judiciary was either the victim of the crime or played a part over and above their assigned role, in the arrest.

### The place and power of the judiciary in eighteenth and early nineteenth-century

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<sup>677</sup> ASSI 42/12. The assize records, signed A. Thomson, note that ‘immediately after the execution of the said William Winter his body instead of being Dissected and Anatomised shall be hung in chains.’

<sup>678</sup> Morgan and Rushton, *Rogues, Thieves*, p. 115.

<sup>679</sup> Particularly at the latter end of the eighteenth century some of the more brutalising public practices on women were being removed, most notably the punishment of burning at the stake for treason, rescinded in 1790. S. Devereaux, *The Abolition of the Burning of Women in England Reconsidered, Crime, History & Societies*, 9 (2) (2005), pp. 73-98

<sup>680</sup> The paucity of female executions meant there was a particular shortage on female bodies for instruction. Of Scotland, Bennett has identified the extreme rarity of female bodies for anatomical instruction noting that ‘the highest number of female criminals dissected in any one decade was six and, after the mid-eighteenth century, the figures could be as low as one per decade.’ R. E. Bennett, *Capital Punishment*, p. 175. This shortage was particularly pronounced in the North East where, as chapter two has highlighted, in the thirty-two years between 1800 and the removal of the punishment of dissection in 1832, there was only one woman executed.

execution trials has been a topic of fevered historiographical debate. Whilst an overwhelming consensus has been established that the burgeoning capital statute was at once 'rigid' in letter but 'highly flexible' in practice,<sup>681</sup> there is less consensus regarding who ultimately the power of life or death lay with. Douglas Hay set the debate alight with his dramatic portrayal of the eighteenth-century judge as a man who 'cherished' the death penalty and apportioned mercy selectively to protect the propertied elites of England.<sup>682</sup> Counter arguments, chief amongst them King's, demonstrated that the judge was but one of a myriad number of people who effected a trial's outcome and that, arguably, the victim was the 'key decision maker.'<sup>683</sup> Similarly, Beattie saw a system 'shot through with discretionary powers.'<sup>684</sup> What is remarkable in all of these studies though, is how little attention was paid to the role of the judge in post-mortem punishment. Unlike the execution trial itself, once declared guilty by the jury, the judge had total power over the decision whether to gibbet or dissect a criminal. As such, in the few glimpses of these decisions the North East affords us, we surely get closer to an understanding of what interests the judiciary were protecting, if any, and it would appear, as Hay stated, their own were high on the list.

Before expounding on this notion, there are a few important caveats to make. Firstly, whilst the decision over whether to dissect or gibbet was initially the presiding judge's, the actual implementation of the sentence was often subject to the discretion of the relevant regional authorities, chief amongst them the sheriffs.<sup>685</sup> In her work on the trial of the Hawksmoor smugglers Dyndor noted that 'the judge, sheriff and local gentlemen' were all involved in the final choice of the exact location of the

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<sup>681</sup> M. J. Wiener, *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1994), p. 58.

<sup>682</sup> Hay, 'Property, Authority', p. 17.

<sup>683</sup> King, 'Decision-Makers' p. 26-27.

<sup>684</sup> J. M. Beattie, *Crime and the Courts in England 1660-1800* (Oxford: Oxford University Press, 1986), p. 406.

<sup>685</sup> 'It was the responsibility of the sheriff to make arrangements for the erection of a gibbet pole at a suitable location, and for the manufacture of a gibbet cage and whatever hooks, chains, or other tackle was necessary to suspend the cage.' S. Tarlow, 'The Technology of the Gibbet,' *International Journal of Historical Archaeology*, 18 (4) (2014), p. 671. , in some cases the presiding Judge could even dictate the location, this was particularly true in Scotland where the Judges invariably placed gibbets at the same site as the execution 'In Scotland the death sentence that was pronounced by the judges in the court stipulated the logistics of the public execution such as the time, date and location at which it would be carried out as well as the details of any post-mortem punishments to be enacted.' R.E. Bennett, *Capital Punishment* p. 187.

gibbet.<sup>686</sup> Secondly, the link that will be shown to be present in all three instances regarding the judiciary, cannot be said to be the sole reason behind the sentence. In all instances, particularly that of William Jobling in 1832, the political and social context are irrefutably influential in the judge's decision (as his opening statements in the case make abundantly clear). Indeed, whilst the judge was technically unencumbered, the social and political context surrounding a case could have a powerful effect on his decision making. As has been demonstrated in previous chapters popular opprobrium towards hangmen, in certain cases, meant they never returned to the region following botched or unpopular executions. This is not to negate the relevance of the link expounded, but merely to offer the necessary qualification that no judicial decision was made in isolation.

### **Highwayman Hazlitt and Judge Perrot:**

On the 18<sup>th</sup> September, 1770, Robert Hazlitt was executed at Durham and thereafter hung in chains for robbing the mail. Hazlitt's crimes took place on Gateshead Fell, one of the northern most points of Durham County, a much-feared open marshland that was bisected by the main thoroughfare from Durham to Newcastle.

Contemporary reports of criminal gangs roaming the area were rife and although the prevalence of crimes committed has been somewhat disputed, historians have shown that it was something of an 'uncontrolled territory' and 'one of the few wild places left in North Durham.'<sup>687</sup> Furthermore, it was a sparsely populated area as one story that appeared in Sykes' *Local Records* attests to. In an entry for 1756 Sykes records the case of a woman robbed by soldiers on the Fell and thrown into an 'old coal pit' where 'she remained seven days before she was discovered,' surviving solely on rainwater caught in her shoe.'<sup>688</sup>

On this desolate and fear-stalked moorland, Hazlitt struck twice in one evening. His first victim was a Miss Margaret Benson of Newcastle, who was travelling from Durham to Newcastle via post-chaise. Hazlitt was said to have put a pistol to her

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<sup>686</sup> Z. Dyndor, 'The Gibbet in the Landscape' in Ward (ed.) *Global History*, p. 109.

<sup>687</sup> Morgan and Rushton, *Rogues, Thieves*, p. 93.

<sup>688</sup> Sykes, *Local Records*, p. 215.

head and demanded, amongst other things, her purse and her watch.<sup>689</sup> Hazlitt appears to have been far from the 'game' and rogue highwayman more redolently associated with the eighteenth-century.<sup>690</sup> Numerous reports noting that during his first attempted robbery he was 'trembling from head to foot.' This may well have been owing to the intransigent state he was in, being as he was, 'without Boots or Great Coat.'<sup>691</sup> Benson escaped, relatively unscathed, and proceeding on her way came across the mailbag carrier, on horseback. Despite forewarning him of the highwayman ahead, he came across Hazlitt but mistook him for a 'rustic making homewards after the labours of the fields'. Hazlitt failed to disavow the mail carrier of his assumptions, even when he said he wanted his bags, a request mistaken for an 'excellent joke', until Hazlitt presented a pistol.<sup>692</sup> Following this second robbery a third attempt was made on another post-chaise, but as with Miss Benson, it proved largely fruitless and Hazlitt escaped with his limited spoils, being later apprehended in neighbouring South Shields.

In the late 1770s the problem of highway robbery was very real in the minds of the authorities and the wider public. Alongside this heightened awareness, the Post-Master General was determined in this period to prosecute the 'many highwaymen who intercepted and robbed its mail coaches' and 'Pressure was mounted' to have those guilty of the crime Hung In Chains.<sup>693</sup> Similarly, around the time of Hazlitt's crime, a noted renaissance in productions of the *Beggar's Opera* with its anti-hero highwayman, MacHeath, were met with 'resurgent criticisms' from, amongst others, Sir John Fielding.<sup>694</sup> Robbing of the mail was a widespread problem across the country in this period. In the same issue that reported on Hazlitt's case, the *Reading Mercury* newspaper noted that a 'mail cart of a new construction...so contrived as top (sic) prevent the mail being robbed...in future' had arrived at the General Post

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<sup>689</sup> 'Hazlitt the Highwayman', *Monthly Chronicle of North-Country Lore and Legend*, 2 (13) (March, 1888), p. 114.

<sup>690</sup> 'The bold and dashing highwayman or street robber who dressed like a beau, drank like a lord, and went without tears or trembling to the gallows.' For a detailed discussion of the history and practice of dying 'game' see A. McKenzie, *Martyrs in Low Life? Dying "Game" in Augustan England*, *Journal of British Studies*, 42 (April, 2003), pp. 167-205; McKenzie, *Tyburn's Martyrs: Execution in England 1675-1775* (London: Hambledon Continuum, 2007), pp. 191 – 219.

<sup>691</sup> *Oxford Journal*, 18th August, 1770

<sup>692</sup> 'Hazlitt the Highwayman', p. 114.

<sup>693</sup> G. J. Dunston, *Whores and Highwaymen: Crime and Justice in the Eighteenth-Century Metropolis* (Waterside Press, 2012), p. 424; Tarlow & Dyndor, 'Landscape', p. 73.

<sup>694</sup> McKenzie, *Tyburn's Martyrs*, p. 119.



Office for the town.<sup>695</sup> Fears over the safety of the mail carried way into the nineteenth-century, as evidenced in this 1831 publication regarding sending 'Notes and Draughts' via post. The suggestion to all senders is to 'cut all such...in Half' and to send them at 'two different times, and to wait for the return of the Post, till the receipt of one Half is acknowledged before the other is sent'.<sup>696</sup>

Given the precedents nationally and the decided efforts of the authorities to tackle this particular crime, it is not surprising that Hazlitt was given this additional post-mortem sentence. However, the attack on the mail may not have been the only mitigating factor in sealing his fate. Indeed, it would appear, that he had previously robbed the judge who tried him! In their report of the trial, the *Newcastle Courant* includes the following note,

'What is remarkable, he (Hazlet) appears to be the person who attacked Judge Perrot (the presiding trial Judge) presented a pistol to his breast and robbed him of two half guineas as he was returning home in his carriage on Monday 25<sup>th</sup> June in the evening, to his country house of Stoke Newington.'<sup>697</sup>

This assertion is corroborated in a '*letter from Newcastle*' printed in *Jackson's Oxford Journal*, in which it stated that 'the Judge believes him to be the same person who robbed his Lordship near London, in June Last.'<sup>698</sup> If ever a man was to be made a spectacle of, it is surely one who has robbed the mail and the very judge who tried him. In that sense Hazlitt's gibbeting may be best understood as the result of a peculiar misfortune as much as a punishment indicative of the period.

### **Gibbeting the nefarious Winter.**

Another official of the law was deeply involved in the next case of gibbeting in the

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<sup>695</sup> *Reading Mercury*, 20<sup>th</sup> August, 1770.

<sup>696</sup> J. Elmes, *A Topographical Dictionary of London and Its Environs: Containing Descriptive and Critical Accounts of All the Public and Private Buildings, Offices, Docks, Squares, Streets, Lanes, Wards, Liberties, Charitable, Scholastic and Other Establishments, with Lists of Their Officers, Patrons, Incumbents of Livings, &c. in the British Metropolis* (Whittaker, Treacher and Arnot, 1831), p. 203.

<sup>697</sup> *Newcastle Courant*, 18th August 1770. A brief report of the crime originally appeared in the *Reading Mercury* 2<sup>nd</sup> July, 1770.

<sup>698</sup> *Jackson's Oxford Journal*, August 25<sup>th</sup>, 1770.

region. William Winter was executed alongside Eleanor and Jane Clarke on 10<sup>th</sup> August, 1792, for the murder of Margaret Crozier. Crozier lived in the Raw, a bastle house three miles North of Elsdon, Rothbury. From this site she ran a small shop for travellers and neighbours. On the night of 29<sup>th</sup> August, 1791, she fell victim to a brutal burglary and ultimately fatal attack by William Winter and two female accomplices (Eleanor and Jane Clarke). Winter was known to be part of the notorious Winter's gang, known colloquially as Faws. Scholarship on the social organisation of crime in the North East has urged caution against use of the term 'gang', whilst acknowledging that their existence in the contemporary mind was unquestioned. However, concessions have been made that there were undoubtedly affiliated groups of 'determined criminals'. In Northumberland a generic term, faws, was often applied to 'vagabonds and wandering gypsies' and was frequently used to describe roaming gangs in the North East.<sup>699</sup> Perhaps chief amongst them was the Winters-Clark gang. Comprised of two families (The Winters and Clarks) they have a somewhat unique place in the annals of North-East criminal history owing to their having 'suffered six executions in five years.'<sup>700</sup> If the notoriety of the gang in the mind of their contemporaries were ever in doubt, then the post-execution broadsheets published following William Winter's hanging should offer ample evidence for such an assertion.

'The nefarious practices of the gang of Winter are too well known, and unhappily the effects have been too much felt, particularly in the western parts of Northumberland and struck so much terror into the minds of the inhabitants as to excite the highest detestation and abhorrence of that vile community and called forth on this occasion universal indignation.'<sup>701</sup>

In the case of Winter, a local magistrate, one Walter Trevelyan, was deeply involved.<sup>702</sup> Described latterly as an 'active magistrate, who was unremitting in his

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<sup>699</sup> Morgan and Rushton, *Rogues, Thieves*, pp.94-95; Mackenzie provided a detailed history behind the name faws Mackenzie, *An Historical, Topographical*, pp.74-75. Accessed 17<sup>th</sup> March, 2018 <https://books.google.co.uk/books?id=-RtNAAAAMAAJ>

<sup>700</sup> Morgan and Rushton, *Rogues, Thieves*, p. 92.

<sup>701</sup> *Particulars of the Unfortunate Victims to the injured Laws of their Country (n.d.)* NCL Local Broadside (L.029.3).

<sup>702</sup> Testament to Trevelyan's involvement can be seen in the Quarter Sessions Order Books where an order was made to pay Trevelyan for, amongst other things, 'horse hire in searching for William Winter and others concerned in the murder of Margaret Crozier'. NRO QSO 13.

exertion to clear the county of the lawless vagabonds by whom it was formerly infested', Trevelyan had made it his life's work to address these nefarious groups; none more so than Winter's gang.<sup>703</sup> In his nineteenth-century history of Newcastle and surrounding regions Eneas McKenzie noted that Trevelyan had in '1792 or 1793', attended by a posse of constables and local magistrates, burnt a number of faws dwellings to the ground just south of Hepple, to the west of Rothbury, Northumberland. The dwellings had been fashioned on an abandoned colliery, a not uncommon practice for faws gangs in the North East, in this period. Reports that Trevelyan and his 'posse's' actions were watched and 'applauded by an immense concourse of spectators' gives an indication of the level of resentment towards these local groups.<sup>704</sup>

As Justice of the Peace, Trevelyan took depositions in the case and ultimately knew that a central piece of evidence in the prosecution of William Winter was given by a shepherd boy who had placed Winter not far from the crime. Trevelyan took the shepherd boy into his personal service, an act motivated by a desire to protect the boy, who had his life threatened and 'attempts...made' to 'induce the lad to prevaricate in giving evidence on his trial'<sup>705</sup> by a number of Winter's companions.<sup>706</sup> A final testament to the depth of Trevelyan's involvement in the prosecution was printed in the *Newcastle Courant*, the day following Winter's execution.

Much praise is due to the worthy magistrate who with such laudable zeal interested himself in bringing to condign punishment these perpetrators of this barbarous deed. The Country has on many occasions experienced the good effects of his endeavours to extirpate the nefarious gang of strollers which have so long infested the County of Northumberland.<sup>707</sup>

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<sup>703</sup> W. A. Chatto, *Rambles in Northumberland, and on the Scottish Border: Interspersed with Brief Notices of Interesting Events in Border History* (London: Chapman and Hall, 1835), p. 114. Accessed 14<sup>th</sup> May, 2017 <https://books.google.co.uk/books?id=jBcHAAAAQAAJ>.

<sup>704</sup> Mackenzie, *Historical, Topographical*, p.74

<sup>705</sup> Chatto, *Rambles*, p. 48.

<sup>706</sup> Richardson's history of the region gives a detailed account of Trevelyan's efforts to protect the boy. Testament to the threats he faced are evidenced in his eventual removal to Aberdeen, although the report noted that he even faced intimidation there. M. A. Richardson, *Local Historian's Table Book*, pp 381-382. Accessed 4<sup>th</sup> April, 2018 <https://books.google.co.uk/books?id=yhcHAAAAQAAJ>

<sup>707</sup> *Newcastle Courant*, August 11<sup>th</sup>, 1792.

Winter's gibbet was to stand as the only instance of this brutal symbol of the ends of crime, in the North East at least, for another four decades. Nationally the punishment of gibbeting steadily petered out from the turn of the nineteenth-century; the combination of an ever-growing demand for cadavers from the surgical ranks and a growing distaste at such abhorrent public spectacles.<sup>708</sup> The only gibbeting to be undertaken in the North East, following Winter's, was actually to become the penultimate instance of the sentence in England and Wales. A full 40 years after William Winter was left to swing in an iron cage on the exposed and wild Northumbrian hillside, another William was to suffer a similar fate, this time in Jarrow. The reception to the sentence and the gibbet itself were instructive of just how hostile the reception to it had grown and as a result how ultimately the sentence was failing in its most basic elements to achieve its original intended aims.

### **Jobling and the Judge**

On the 1<sup>st</sup> August, 1832, Jarrow miner William Jobling was sentenced to death for his part in the murder of 71-year-old, Justice of the Peace, Nicholas Fairles. In one very real sense then there is a clear link between Jobling and the Judiciary, but his case and the sentence he suffered was also the brutal by-product of a long running industrial dispute and, as such, the social and political context from which the case arose is essential background.

William Jobling was a pitman at the Jarrow Colliery, a site, along with many others in the North East in the period, of increasing industrial unrest. A combination of poor working practices and restrictive payment structures meant many mining communities were veritable tinderboxes. The combination of a newly resurgent working class bolstered by a burgeoning Trade Union movement and the newly enacted Reform Act had led to a growing sense of the established order being under immense pressure.<sup>709</sup> In the mining communities, a summer of tense industrial

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<sup>708</sup> Recent national surveys have noted the precipitous decline in the gibbets use, with 49 instances of its use in the 1790s, compared to 10 in the 1810's and only 1 in 1820. Fig 1. The Frequency of hanging in chains by decade in Tarlow & Dyndor, *Landscape*, p. 73.

<sup>709</sup> For a detailed assessment of the political and industrial amongst the pitmen of the region in this period, including the importance of Jobling's case, see D. Ridley, *'Political and industrial crisis: the*

stand-offs over restrictive working practices and dangerous conditions had created a febrile atmosphere. Jarrow in particular had a reputation for aggressive action in settling disputes. In her polemical work of 1939 on Jarrow, the then MP Ellen Wilkinson, noted that its miners were renowned for their 'effective private methods' of settling keekers.<sup>710</sup>

'violence may be a bad way of getting public sympathy, but the knowledge that he might be found behind a hedge with his head split open kept many a keeker (watcher) within some tolerable bounds.'<sup>711</sup>

Fairles himself was not unaccustomed to this intimidation. On 16<sup>th</sup> March, 1832 A group of striking miners from both Jarrow and Hepburn had formed a 'riotous assembly' at a South Shields colliery to which Fairles had been dispatched to deal with it and rode through the crowd, demanding they desist and disperse. It is recorded that one of the group yelled 'God Smash, whammel the aad bugger wi' the corves.' Fairles' reply on being threatened with attack was remarkably prescient.

'This you may easily do, as I am unprotected, but you can suppose that because you have killed me you have killed the law? No, that will still remain, and the aggressors will be sure to reap its fullest punishment for the act.'<sup>712</sup>

However, on the 11<sup>th</sup> June, 1832 Fairles suffered a beating so severe that it later killed him. He had been returning on a pony through Jarrow when he passed Turner's Public House. He was approached by Jobling, whom he knew, for some money for a drink; a request he refused. Another miner named Ralph Armstrong then pulled Fairles to the ground and beat him severely about the head with a rock. Ralph Armstrong immediately escaped the scene, but Jobling was later

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*experience of the Tyne and Wear pitmen, 1831-1832*, PhD Diss., Durham University, 1994, <http://etheses.dur.ac.uk/5366/>.

<sup>710</sup> A Keeker was someone who 'inspects the hewers and wailers' effectively their job was to oversee the extraction of the coal and make sure it was worked to the maximum advantage, 'Mining Occupations', Durham Mining Museum accessed 11<sup>th</sup> June 2018

<http://www.dmm.org.uk/educate/mineocc.htm>

<sup>711</sup> E. Wilkinson, *The Town That Was Murdered: The Life-Story of Jarrow* (London: Gollancz, 1939), p. 27.

<sup>712</sup> N. McCord, 'The Murder of Nicholas Fairles, Esq., J.P., at Jarrow Slake, on 11th June, 1832,' *South Shields Archaeological and History Society Papers*, 1 (6) (1958), p. 13.

apprehended, drinking in a crowd at the South Shields Races.<sup>713</sup> He was sentenced to death and the post-mortem punishment of gibbeting.

There is no doubt that Fairles was a deeply contested figure in the North East. Whilst Fairles may have been vilified by the Jarrow miners, his standing in the wider community was unquestionable. A renowned magistrate, recognised at one time by Her Majesty's Government for his work in the 'Sailor's Stick' of 1815,<sup>714</sup> Fairles' death was a great shock to the great and good of the region. His standing in the community was clear for all to see at his funeral.<sup>714</sup> Held on Wednesday 27<sup>th</sup> June, numerous ships in the harbor were 'hoisted half-staff high' and most of the town's shops closed as a mark of respect. A veritable roll call of the town and surrounding regions great and good were in attendance, amongst them Newcastle's Mayor.<sup>715</sup> Fairles's remains were placed in a wooden coffin, made from a tree planted the year of his birth, and the procession of his body was 'attended to the grave' by some 200 gentlemen.<sup>716</sup> On the other side, testament to the strength of anger against him can be seen in the authorities' failure to ever find Ralph Armstrong, despite an enormous £400 reward advertised for his recovery.<sup>717</sup>

Given the heated industrial relations at the time it is impossible to remove the case from its immediate context. Indeed, when it came to trial, in both his opening statement and summation of the case, Judge Parke made it abundantly clear where he stood with regards to mining disputes and the growing power of the unions. In sentencing Jobling to death, Parke noted,

To the death of that gentleman, your country is about to  
add the death of yourself: and it will afford another  
melancholy proof of the baneful effects of those

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<sup>713</sup> Reporting on his apprehension one newspaper noted that Jobling had taken cover amongst tents erected on South Shields Sands, for the races. Testament to the sentiment towards the authorities is evidenced in the report that noted that the police attempted to take him into custody but 'his comrades would not allow it'. Resulting in a 'party of the military' being called in order to secure him. *Leicester Journal*, 22<sup>nd</sup> June, 1832.

<sup>714</sup> *The Gentleman's Magazine and Historical Chronicle*, Vol 102, (1832) p. 93. Accessed 17<sup>th</sup> July 2017 <https://books.google.co.uk/books?id=6rQUAAAAQAAJ>

<sup>715</sup> Sykes, *Local Records*, pp.363-65.

<sup>716</sup> *Gentlemen's Magazine*, p. 91; Fairles himself had, only recently, provided a cautionary notice to local coffin builders regarding the necessity for quality construction given cholera epidemics DRO EP/SS.SH 14/1, p. 311.

<sup>717</sup> 'Four Hundred Pounds Reward Broadsheet' (South Shields: Market Place Printing Office: R. M. Kelly, South Shields, n.d.), *RTC*, Newcastle Central Library.

combinations amongst the workmen against their employers which have prevailed so many months in this country; which have been deeply injurious both to the public interests and to the interests of those concerned.<sup>718</sup>

In his work on industrial crises in the North East in the nineteenth-century Ridley acknowledged that Parkes' frequent references to the union were 'obviously matters above the immediate criminal issues at stake', however he stopped short of denoting it a miscarriage of justice believing it 'too strong' a judgement when the evidence against is considered.<sup>719</sup> Similarly, Marshall has argued that the continuing belief of Jobling's innocence in the region is testament to the tendency of 'collective memory' to 'pander to the prejudices of the audience.'<sup>720</sup> Despite Jobling's protestations of innocence, the jury took only a quarter of an hour to return a guilty verdict and the sentence of death was passed. However, the circumstances of Jobling's post-mortem sentence were less simple. The recent passing of the Anatomy Act had removed the penal option of dissection, although as proceedings of the court make apparent, the exact status of the punishment was not entirely clear. On deciding to sentence Jobling to the gibbet Parke rationalized the sentence as follows,

I do not know... but that a bill, which may, by this time, have received the Royal Assent, has not taken from me the power to order your body to be dissected; and therefore, I must pass such a sentence as shall not be erroneous.<sup>721</sup>

Arguably another sentence was available to Justice Parke. As will be shown in the concluding chapter, the sentence of prison burial had been permitted by the Anatomy Act. However, it is clear that confusion over the recent passing of the legislation had left Parke seemingly unaware of any alternative options.

Irrespective of misconceptions regarding the punishment available to Judge Parke, the rarity and perceived brutality felt at the time by the community at the harshness of Jobling's sentence cannot be denied. To put it in context, four years previously,

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<sup>718</sup> 'Durham Assizes,' *The Times*, August 4<sup>th</sup>, 1832.

<sup>719</sup> Ridley, 'Political and Industrial Crisis': p. 286. {Citation}

<sup>720</sup> A. Marshall, 'The Death of Nicholas Fairles: Law and Community in South Shields 1832', *North East England History Institute*, 2009, p. 3.

<sup>721</sup> *Tyne Mercury*, August 7<sup>th</sup>, 1832.

just North of the Border, the infamous body snatcher William Burke had not even suffered the gibbet as the presiding judge thought the sight would offend the public eye.<sup>722</sup> One further reason Jobling's case was seen so widely as unjust is that many local accounts misunderstood the history of the sentence of Hanging in Chains. Reports from the time believed the sentence to have only recently been re-enacted on the statute books; In essence, it was seen as a brutal punishment revived from the dead specifically to punish this man. Testament to this can be seen in a report, some thirty years after, regarding the recent removal of Jobling's post, as part of works on the new Tyne Dock railway. In the article, the *Durham County Advertiser* misreported three key elements of the case; the co-accused's name being just one.<sup>723</sup>

As has been shown earlier, this misconception most likely arose from the reaffirmation of Hanging in Chains as a sentence in the 1832 Anatomy Act; in removing dissection as a punishment it simultaneously made the sanction of Hanging in Chains an inevitable one for murderers henceforth. Even newspapers reported its reappearance in misleading ways, one noting the government's passing of the Anatomy Act as having 'sanctioned the revival of a practice always disgraceful.'<sup>724</sup> In truth, the punishment had never gone away. Indeed, it was to be used one final time, in Leicester, mere weeks after Jobling's gibbet had been raised. Executed for a particularly brutal murder, local bookbinder James Cook was gibbeted, but owing to numerous complaints a successful petition to the Home Office saw the structure removed mere days after its erection. One local newspaper thought its removal perfectly encapsulated the redundant nature of this punishment.

James Cook will be the last murderer that will be sentenced to be hung in chains, since no Judge can hereafter think of awarding the punishment to ordinary murderers while the most atrocious delinquent of that description has been ungibbeted.<sup>725</sup>

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<sup>722</sup> *Morning Post*, December 30<sup>th</sup>, 1828.

<sup>723</sup> *Durham County Advertiser*, 4<sup>th</sup> April, 1856. The report in question mistakenly reported Ralph Armstrong as James Armstrong, incorrectly cited the gibbeting sentence as 'an old law revived by the Whigs' and stated that 'Jobling was the only person...gibbeted under that act.'

<sup>724</sup> *Huntingdon, Bedford & Peterborough Gazette*, 25<sup>th</sup> August, 1832.

<sup>725</sup> *Leicester Journal*, 18th August, 1832.



The unexpected return of the gibbet in 1832 to punish William Jobling is therefore probably best understood as a both a reaction to social and political forces of the time and a simple misfortune of timing, the alternative punishment of dissection having been recently removed from the penal arsenal. However, there is a particular irony in the circumstances which led to this fate, namely that one of Newcastle and the wider North East's most widely lauded heroes, Earl Grey, was instrumental in the continuation of Hanging in Chains on the statute book. It was under his Liberal administration that the Anatomy Act of 1832 was sanctioned and with it the continuation of Hanging in Chains. Indeed, Grey was instrumental in blocking earlier attempts at the removal of both punishments. During the 1828 passage of the Offences Against the Person Act, at the bill's third reading, Grey called for both punishments' continuation.<sup>726</sup> Many commentators saw Grey's administration's policy on these punishments continuation as entirely at odds with their 'professed zeal' as a 'liberal government' one paper railed,

To sanction the indecent treatment of the dead, although the memory of that dead be stained with crime-to cover the beauty of the land with abominable nuisances, shocking to the sight and feelings of women and children...is no evidence of wisdom in Government...We feel confident that, in another parliament, that truly disgraceful clause in the Anatomy Bill, which authorises the hanging in chains, will be repealed.<sup>727</sup>

The existence then, to this day, of a 30-metre statue on which Grey stands atop looking out over the people of Newcastle is a rather more prescient recognition of his parliamentary career than first intended.<sup>728</sup>

## Constructing the Gibbet

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<sup>726</sup> Grey's reasoning was more nuanced than reporting allowed for. He was not without reservations himself regarding both the efficacy and morality of the punishment, noting that he was 'not one of those who on common occasions contended for severity of punishment'. However, he argued that the continuation, particularly of dissection, for murder was essential as Hanging the murderer in chains would 'not operate in the same salutary way on the minds of the people.' HL Deb 15 April 1828, vol 18 cc1442-5 accessed 14<sup>th</sup> December 2018 <https://api.parliament.uk/historic-hansard/lords/1828/apr/15/offences-against-the-person-bill>

<sup>727</sup> *Huntingdon, Bedford & Peterborough Gazette*, 25<sup>th</sup> August, 1832.

<sup>728</sup> 'Grey's Monument,' *Public Monuments & Sculpture Association*, accessed September 12, 2016, <http://www.pmsa.org.uk/pmsa-database/9484/>.

Gibbets by their very nature were relatively permanent structures, intended to last. However, recent national studies have shown that there was no centrally agreed design or model of construction for the gibbet and as such there were numerous regional variations in their construction.<sup>729</sup> Indeed, in regions like the North East, it is entirely feasible that joiners and craftsmen employed to make them may have never seen one in their lifetime. Given this, it is notable how many marked commonalities there are in their construction in the region. Of the records available, in cases in the North East, there was a strong central post, roughly 20-30 feet high, from which a protruding bar supported an iron cage containing the body of the condemned. In most instances the details of the gibbet itself are limited, as in the case of Hazlitt where it is simply recorded as '25 feet high.'<sup>730</sup> Full details are available in some instances though, reports of William Jobling's gibbet on Jarrow Slake in 1832 being particularly detailed.

'The Gibbet is formed of a square piece of oak, 21 feet long, and about three feet in diameter, with strong bars of iron up each side. It is fixed in a stone 1 ½ ton weight, which is sunk in the slake. At high water there will be 16 or 17 feet of the gibbet visible.'

The account of the gibbet case was equally detailed, noting that the body arrived at the spot on a wagon and was then 'cased in flat bars of iron of 2 ½ inches breadth. Jobling's feet were 'placed in stirrups with a collar round the neck'. Bars 'went up each side of the head and ended in a ring by which he was suspended'.<sup>731</sup> Earlier instances of gibbeting in the North East concur with the size and wooden nature of the gibbet structure. In his remembrances of his childhood in the late eighteenth-century, Naturalist Charles Waterton noted the remaining post at the site of Andrew Mill's gibbet (known commonly as Mills Stob). Erected in 1691, by the late eighteenth century, Waterton noted it as being 'an oaken post, very strong, and some nine feet

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<sup>729</sup> Tarlow, 'The Technology of the Gibbet', p. 697.

<sup>730</sup> J. Sykes, *Local Records* p. 245.

<sup>731</sup> 'An Account of the Gibbeting of Wm. Jobling, at Jarrow Slake: On Monday, August 6th, 1832, pursuant to His Sentence for the Murder of Nicholas Fairles, Esq., Resident Magistrate of South Shields.' In J. Bell, *Collections Relative to the River Tyne its Trade and the Conservency Thereof. Vol III River Tyne Collection III 1824-1839*, NCL L942.8,.

high. This was its appearance in my days, but formerly it must have been much higher.’<sup>732</sup>

It would also appear that there were variations in the treatment of the body within the gibbet. In their recent national study of gibbets Tarlow and Dyndor noted the occasional posthumous mentions in later newspapers of bodies being tarred or covered with a preservative, but argued that they found no evidence for its use in the Sheriff’s cravings. Their assertion being that if tar was used routinely it was probably only a small quantity...which would not prevent recognition of the criminal.’<sup>733</sup>

Contemporary reports of gibbets in the North East do mention either pitch or tar being used in the presentation of the gibbeted body. In the case of William Jobling, two surviving broadsides, printed within weeks of the gibbeting, note the use of a tar like ‘pitch’ on the body.’<sup>734</sup> One detailed that ‘the hands were hung by the side and covered with pitch; the face was pitched and covered with a piece of white cloth.’<sup>735</sup>

The mention of the white cloth covering the face would suggest that the identity of the criminal, although already known in the locality, was at least partially obscured to the wider public. This practice would have been in line with executions at that time, detailed in earlier chapters, in which a white cloth hood was placed over the victim’s head, prior to the drop. An accompanying engraving of Jobling’s gibbet on one of the surviving broadsides detailing his post-mortem punishment appears to collaborate this; the face appearing covered and, in some way, obscured. Similarly, although not directly attributable to gibbets in the region, in the work of Gateshead resident Thomas Bewick, gibbets are often depicted and in one case it is notable that the face of the condemned appears to be wrapped in a sort of bandage or cloth like fabric.’<sup>736</sup>

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<sup>732</sup> ‘Charles Waterton, Naturalist’, *Monthly Chronicle of North-Country Lore and Legend*, 2 (20) (October, 1888), p. 451.

<sup>733</sup> Tarlow & Dyndor, *Landscape*, p. 76.

<sup>734</sup> Although both undated, they were clearly printed within days of the gibbeting as they note it as still being present in the landscape. The gibbet itself was stolen away a mere 4 weeks later. ‘An Account of the Gibbeting of Wm. Jobling, at Jarrow Slake. On Monday, August 6th, 1832, pursuant to His Sentence, for the Murder of Nicholas Fairles, Esq., resident Magistrate of South Shields, with a Correct Representation of the Gibbet,’ NCL *Local Broadsides* L.029; ‘An Account of the Gibbeting of Wm. Jobling, at Jarrow Slake. On Monday, August 6th, 1832, pursuant to His Sentence, for the Murder of Nicholas Fairles, Esq., resident Magistrate of South Shields.’ J. Bell, *Collections Relative to the River Tyne: its Trade and the Conservancy Thereof Vol III*, NCL L942.8.

<sup>735</sup> ‘An Account of the Gibbeting of Wm. Jobling, at Jarrow Slake.’

<sup>736</sup> Gibbets were a feature of Thomas Bewick’s work in the North East, most notably *Gibbet*. from *Thomas Bewick’s Vignettes*, 1827 (NCL). Brewer has argued convincingly that, ‘Many of Bewick’s

These instances then appear in line with wider practice in public punishment in which the whole body was increasingly hidden in plain sight. However, in the case of Hazlitt it would appear his face was not covered, but evidence of preservation appears to be apparent. Writing in 1776, six years after his gibbeting, travelling America Quaker Jabez Maud Fisher noted that Hazlitt's 'flesh seemed perfect and he could not have been executed long.'<sup>737</sup>

Where records of the costs of construction survive it is clear that the punishment itself was a very expensive option for the authorities. As has been shown in chapter four the punishment of dissection could be supplemented by the Barber Surgeons, through the selling of ticketed entries to lectures on the body. However, the gibbet was a spectacle for which no charge could be levied, as its very visibility for long distances around was central to its effectiveness. Order book records show in the case of Winter's gibbet that a man named Anthony Potts was reimbursed for the sum of £12 9s for 'work and materials found and expenses paid by him about erecting a gibbet for the Body of William Winter.'<sup>738</sup> The costs were also ongoing, with gibbets often requiring frequent maintenance. On January 16<sup>th</sup>, 1812, in one of the many instances in which Winter's gibbet was rebuilt we see that the Treasurer to Northumberland Quarter Sessions was authorised to pay £13 2s to joiners John and Thomas Ferrers 'for their trouble and expenses in making and erecting a Gibbet upon Whisker Shield Common in this county by order of the High Sheriff.'<sup>739</sup> Indeed, one recent national study detailed the total costs of Winter's gibbet as running to £55.<sup>740</sup> When one considers that the total recorded costs of Jane Jamieson's execution in Newcastle, in 1829, in which 20,000 people processed through the town centre to the place of execution on the Town Moor, only amounted to £28 13s 3d, it

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gibbets suggest that enclosure and emparkment...are acts of separation. Man is cut off from man; those who should display moral probity shut themselves off from the source of virtue – nature. The consequence of such moral blindness is apparent from one picture in which a corpse picked by carrion crows hangs from a gallows on a wild Moorland hilltop; in the cultivated valley below we see a village church, and a closed carriage disappears out of the picture frame: church and aristocracy alike are distanced from the consequences of their deeds. J. Brewer, *The Pleasures of the Imagination: English Culture in the Eighteenth Century* (London: New York: Routledge, 2013), p. 421.'

<sup>737</sup> J.M. Fisher, *An American Quaker in the British Isles. The Travel Journals of Jabez Maud Fisher, 1775-1779*, K. Morgan (ed.), (Oxford: Oxford University Press for British Academy, 1992), pp. 178-9 cited in Morgan and Rushton, *Rogues, Thieves*, pp. 149-50.

<sup>738</sup> NRO QSO 13

<sup>739</sup> NRO QSO 18

<sup>740</sup> Tarlow, 'Technology of the Gibbet,' p. 678.

is starkly apparent just how prohibitively expensive the post-mortem punishment of gibbeting could be.<sup>741</sup>

Then there were the additional costs of processing the gibbet to the site and guarding the gibbet, if required. In the case of William Jobling, as will be shown later in the chapter, the atmosphere in the locality regarding his case was so febrile that the gibbet procession had a large military guard. Jobling's body was drawn in a four-wheeled wagon from Durham Gaol to Jarrow Slake, some 17-20 miles. The body was escorted by, 'a troop of the 8<sup>th</sup> Hussars, and two companies of the 18<sup>th</sup> regiment of Infantry, Mr Griffiths, the under-sheriff, Mr Frushard, the gaoler, officers of the gaol, bailiffs &c.' Furthermore, an armed guard was placed around the gibbet for two whole weeks, in an attempt to avoid removal of the body. An effort in vain, as the body was surreptitiously removed mere weeks after the guard left, never to be recovered.<sup>742</sup> The gibbet then, was a very expensive method of punishment for the authorities, especially when one considers the case of Jobling and how long it actually lasted in the landscape. When one considers these costs in addition to the already large expense of an execution, it is unsurprising how infrequently it was used.

### **Locating the gibbet.**

On Gateshead Fell, to the south of the River Tyne, a grim spectacle scarred the landscape. Standing at an imposing height, it dominated the skyline and loomed over the residents for miles around. In some quarters it was the subject of great anger and fear, one local councillor reporting of it that 'hostility never sounded louder' and another running the headline 'heavenly body or hell's angel?'<sup>743</sup> The structure in question was Anthony Gormley's Angel of the North and has now become a

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<sup>741</sup> The cost of Jameson's execution was recorded as £28 13s 3d. Skyes included the full breakdown of the costs in his local records as a point of interest. 'Expenses attending the execution of J. Jameson' from 'A statement of the corporation and steward's accounts from one year, commencing Michaelmas 1828, ending Michaelmas 1829' in J. Sykes, *Local Records*, p. 245.

<sup>742</sup> 'An Account of the Gibbeting of Wm. Jobling, at Jarrow Slake.' Whilst attempts to remove gibbets or steal the bodies by family and friends were not uncommon, Gatrell noting that the structures were 'never safe from nocturnal raids', they were rarely successful. Gatrell, *Hanging Tree*, p. 87

<sup>743</sup> M. White, 'A Northern Tale', in A. Gormley and Gateshead Council (eds.), *Making An Angel*, (London: Booth-Clibborn Editions, 1994) cited in F. M. Blackman, 'The Angel of the North: Public Art and Wellbeing', PhD thesis, Durham University (2014), pp.78-79, <http://etheses.dur.ac.uk/10927/>

treasured cultural symbol of the North East. The trajectory of the Angel of the North from a widely vilified, shameful and feared structure to a topographical landmark, prized symbol and the site of many a touristic pilgrimage is not unique. In fact, it tracks with remarkable similarity the lifespan of the few gibbet structures that stood on that same North East landscape between 1752 and the eventual removal of the punishment in 1834.

Recent scholarship on gibbets has confirmed that the positioning of a gibbet itself was 'as significant...as the cage and post itself.'<sup>744</sup> Early work on their locations suggested that they were sited either on the boundaries of parishes or on highways.<sup>745</sup> However, more extensive national studies have found anomalies in this pattern and highlighted numerous cases where gibbets were placed elsewhere.<sup>746</sup> In nearly all cases though, they were placed near or at the scene of the crime itself. One major exception appears to be in Scotland where the gibbet was, more often, located at the site of the execution itself.<sup>747</sup> Whilst examples of crime scene executions have been recorded in England, it appears the opposite was rarely, if ever, the case; gibbets always being placed at a location away from the execution site.<sup>748</sup>

In all three instances of gibbeting following the Murder Act in the North East, the structures were placed on or near to the scene of the crime or, in the case of William Winter, a location connected with the crime. In the cases of Hazlitt and Winter that positioning also coincided with being on the edge of major highways. William Jobling's gibbet was the only gibbet not placed on dry land, being as it was located in a tidal slip of water known as Jarrow Slake. The positioning of Jobling's gibbet was, in many ways, more in line with the presentation of 'pirates' and 'sea criminals' at London's execution dock in Wapping.<sup>749</sup> However, proximity to a water source was not without precedent in the region. Michael Curry's gibbet was located near the cliff

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<sup>744</sup> Dyndor, 'Gibbet in the Landscape', p. 103.

<sup>745</sup> Whyte, 'Deviant Dead', *Landscapes*, 4, (1) (April, 2003), pp. 24–39; Coolen, 'Places of Justice', pp.762-79

<sup>746</sup> Tarlow & Dyndor, 'Landscape of the Gibbet,' p. 72.

<sup>747</sup> Bennett, 'Capital Punishment' p. 136

<sup>748</sup> Poole, "For the Benefit of Example' pp. 71–101.

<sup>749</sup> S. Frenee, 'Pirates and Gallows at Execution Dock: Nautical Justice in Early Modern England', <https://journals.openedition.org/criminocorpus/3080> see Fig. 2 'Drawing from The *Pirates Own Book*, Charles Ellms, (Boston, Dickinson, 1837), chapter 10.

edge on a 'headland to the north of Whitley Bay,' a point that thereafter took his name and remains to this day Curry's Point. Similarly, Hazlitt's gibbet although by the roadside also sat at the 'North side of a pond of water'. Indeed, one contemporary commentator noted the 'idea of two malefactors' being conjured up by the gibbet's reflection on the water, a vision which 'may easily conjure up his ghost to a passing person.'<sup>750</sup>

### **Gibbeting a highwayman.**

Whilst the exact location of Hazlitt's gibbet is not marked on surviving maps of Gateshead Fell, numerous contemporaneous recordings of its sighting and other disparate sources help us get very close. In 1773 the Reverend James Murray, recording his journey from Newcastle to London, was struck by a 'solemn scene' whilst passing over Gateshead Fell. Murray recorded that 'Haslett hangs on a gibbet at our left hand'. He went on to note that it was at the 'foot of a wild romantic mountain, near the side of a small lake.' In a later reprint of Murray's travelogue, the 'wild romantic mountain' is identified as 'Beacon Hill', a name derived from a beacon being placed atop it in the winter of 1803 'on the alarm of invasion.'<sup>751</sup> In line with Murray's description allusions to the body of water appear in an 1805 song, entitled the Bonny Geatsiders, in which Gateshead volunteer forces had the following threat for 'Bonnepart' (Napoleon Bonaparte).

'And to Hazlitt's pond bring 'im,  
And there in chains hing 'im;  
What a seet for the Bonny Geatsiders'<sup>752</sup>

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<sup>750</sup> 'Curry's Point', BBC NEWS. Accessed September 2, 2016, <http://www.bbc.co.uk/history/domesday/dblock/GB-432000-573000/page/14>; Murray, *Travels of the Imagination*, pp.30-32

<sup>751</sup> Ibid., pp.30-32.

<sup>752</sup> 'The Bonny Geatsiders – 1805' in J. Bell, *Rhymes of Northern Bards: Being a Curious Collection of Old and New Songs and Poems, Peculiar to the Counties of Newcastle Upon Tyne, Northumberland, and Durham*, (Newcastle upon Tyne: M. Angus & Son, 1812) p. 29.

These two descriptions would tally exactly with a 'Hazlet's Pond' that appears on an 1805 Map of the roads on the 'south of Gateshead Fell, shown below in illustration 8.<sup>753</sup>

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<sup>753</sup> This derivation of Hazlet, as noted earlier, was relatively common in records of the period. Testament to this can be seen in the reprint of the Rev Murray's account in which a footnote acknowledges three separate spellings. 'Robert Hasslet, Hazlet or Hazlitt.', J. Murray, *Travels of the Imagination*, p. 30.



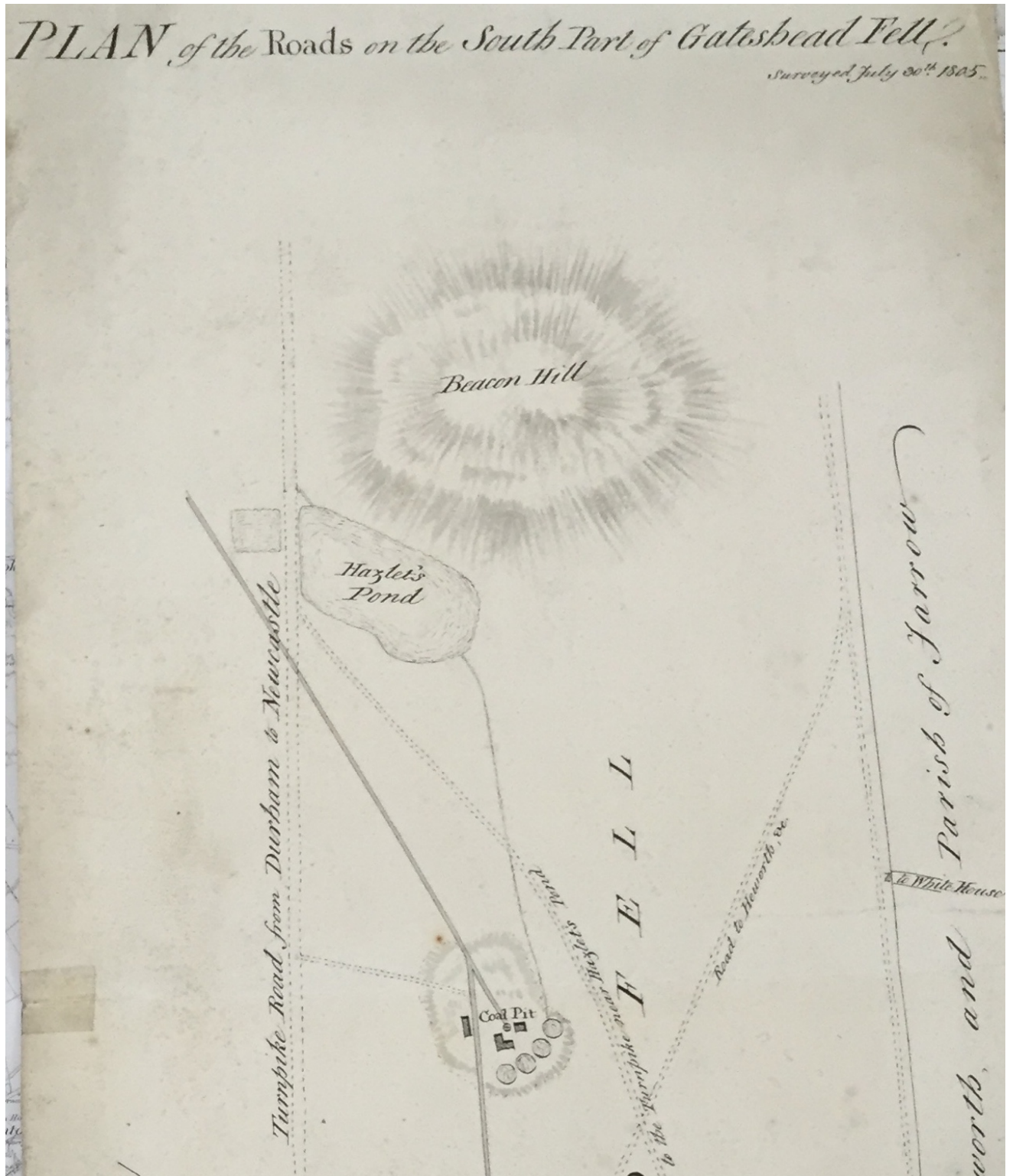


Illustration 8: Plan of the Roads on the South of Gateshead Fell. Surveyed July 30<sup>th</sup> 1805. TWAM DT.BEL/2/205.

The road which the pond sat beside was the major turnpike road between Durham and Newcastle and, more significantly, the route taken by the Judges of Assize into Newcastle. Writing in 1827, Mackenzie noted the continuation of the centuries old

practice by which the Sheriff of Northumberland would ride out from Newcastle to Sheriff's Hill, immediately north of Beacon Hill, to 'receive the judges of assize on their northern circuit.'<sup>754</sup>

Hazlett's gibbet position then would appear very much in line with early studies that have shown that prominence and proximity to major thoroughfares were a regular feature of gibbets in the landscape.<sup>755</sup> Similarly, its removal from the landscape appears to be as a result of the enclosure act of 1809. This is in line with other studies that have noted how the widespread acts of enclosure led to the removal of most gibbet sites in the country.<sup>756</sup> A note in Lubin's 'Stanzas on the Intended New Line of Road, from Potticar Lane to Leyburn Hole' details that.

Hazlett's gibbet, or stob, as it was called, remained here many years after the body had disappeared. On the inclosure of the Fell, Hazlett's pond...becoming the property of Michael Hall, Esq., that gentleman caused the pond to be drained and cultivated.<sup>757</sup>

Hall's subsequent ownership of the land would appear to sit in line with its disappearance from later cartography of the region. However, a 'Heslop's pond' appears in the exact same location on an Ordnance Survey map from 1877, see illustration 9.

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<sup>754</sup> Writing in 1827 Mackenzie noted that the Sheriff's route had changed, but detailed that 'formerly the procession halted at Sheriff Hill, or the sign of the Cannon, on the old road', E. Mackenzie, 'Descriptive and Historical Account' p. 746. This practice continued until 1845, Purdue noting that 'Ralph Carr (later Carr-Ellison) was the last High Sheriff to set off, accompanied by Bailiffs, trumpeters, gentlemen and yeomen, to meet the Judges. The next year, 1846, the Judges came by train and were met at the Newcastle & Carlisle Railway Station' B. Purdue, *Newcastle: The Biography* (Gloucester: Amberley Publishing, 2012), p. 222.

<sup>755</sup> Whyte, 'Deviant Dead' pp. 925-938

<sup>756</sup> Tarlow, *Golden and Ghoulish Age*, p. 86; In her work on new theoretical approaches to the study of landscapes Whyte noted that 'Enclosure provides a useful example of an historical process that has left both an obvious physical mark on the landscape, as well as being a well-known historical narrative of rupture leading to the development of modern notions of private property' N. Whyte, 'Senses of Place, Senses of Time: Landscape History from a British Perspective', *Landscape Research*, 40 (8) (2015), pp. 925-938. p. 929.

<sup>757</sup> Footnote by Editor J. Sykes in L. Lubin, *Stanzas on the Intended New Line of Road, from Potticar Lane to Leyburn Hole*, (Newcastle upon Tyne: John Sykes, 1825) pp. 5-6. The extent of Hall's cultivation of the land can be seen in a report in the Newcastle Courant for the proceedings of the local Botanical and Horticultural Society. The paper noted that there was a 'very fine dish of nearly twenty varieties of *Seedling Apples* from Michael Hall Esq of Beacon Lough, many of which were very highly flavoured.' *Newcastle Courant*, 12<sup>th</sup> March, 1836.



Illustration 9: Heslop's Pond marked beneath Beacon Lough Plantation from 1877 Ordnance Survey Map of Gateshead, Sheet VII.5. Surveyed 1856. Scale 1/2500. Gateshead Central Library MS04/046.

## Winter's Gibbet

The longest lasting of all the gibbets in the region is William Winter's, still present on the landscape today and a regular site of local interest, as shown in illustrations 10 and 11 below.<sup>758</sup> Positioned on the Old Turnpike road, roughly a mile south of Elsdon and immediately next to a medieval Steng Cross, the positioning of the gibbet has many of the attributes identified by national studies of their placement; namely its proximity to a major road, its prominence in the landscape and its close association with an existing ancient boundary marker.<sup>759</sup> It is notable though that the gibbet is nearly five miles from the original scene of crime, which took place on the road north of Elsdon. One previous study has argued convincingly that the judicial wording regarding Winter's sentence may give a further identifier as to the reasoning for the final location of the gibbet, detailing that Winter should be, 'hung in chains on some

<sup>758</sup> The gibbet is clearly marked on Northumberland LXI (includes: Corsenside; Elsdon; Monkridge.) Surveyed: 1863 Published: 1866 available online National Library of Scotland <https://maps.nls.uk/view/102346377>

<sup>759</sup> Cooler, 'Places of Justice', pp. 762-779; Whyte, 'Deviant Dead', pp. 24-39.

conspicuous part of Whiskershiel Common at a distance of one hundred yards from the Turnpike Road leading to Elsdon'.<sup>760</sup>

Whiskershiel common, was where shepherd boy Robert Hindmarsh (Hymers) had come across William Winter and the Clarke women. Hymers' evidence at the Coroner's Inquest was instrumental in the capture of Winter and the Clarke women. Hindmarsh had come across them whilst tending to sheep on Whiskershiel Common and noticed a knife in their possession. This testimony led to a search being undertaken with in order to locate 'two women and one man travelling with a Dunn Ass'.<sup>761</sup> This information, ultimately, led to their capture and subsequently Hindmarsh was brought by the Parish Constable, John Brown, to formally identify the suspects.<sup>762</sup> The importance of the shepherd boy's evidence was illustrated by the efforts to which Justice of the Peace, Trevelyan, went to protect him. Later reports noting that Trevelyan took him 'under his protection' at his house at Netherwiton where the boy remained a servant for a number of years.<sup>763</sup> It would appear that the importance placed on the testimony and the influence of Trevelyan in the region and regarding the case may well have played a role in the final location of the gibbet itself.

The testimony of the shepherd boy gathered national recognition when it was featured in the original versions of Robert Baydon Powell's *Scouting for Boys*. Alongside a detailed explanation of the trial, highlighted the role of Hymers the book also detailed an exercise, for Scout leaders, in which a full recreation of the trial could be undertaken with boys in the division. At the end the Scout Leader was instructed to summarise the key message that 'the boy (Hindmarsh) having carried out each part of the duty of a scout, in order to bring home its lesson to the boys.'<sup>764</sup>

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<sup>760</sup> *Northern Circuit Minute Book 1789-1810* ASSI 42/12.

<sup>761</sup> NRO EP83/18

<sup>762</sup> B. Redfern, *The Gallows Tree*, pp. 49-50

<sup>763</sup> Richardson, *Local Historian's Table Book*, p. 381. Despite Trevelyan's efforts the boy lived a short life and eventually returned to father's house in Whiskershiel where he died aged 22. Testament to the influence of the Winters' gang can be seen in the same report where threats were still made on the boy's life even when he had been moved to Scotland by Trevelyan for his own safety.

<sup>764</sup> R. Baden-Powell, *Scouting for Boys* (1908), (Reprint, Oxford University Press: St Ives, 2005) p. 50.





Illustration 10: A family having a day out to 'Winters Gibbet' in Elsdon, c. 1910, Northumberland. NRO 01449/499. Image Produced under Creative Commons Licence, Northumberland Archives.



Illustration 11: *Winter's Gibbet*, Elsdon, Northumberland. October 2016. Author's own image.

## Jobling, the Justice of the Peace and Jarrow Slake

In the case of William Jobling, the position of his gibbet, often referred to as 'Jobling's Post', is marked on numerous nineteenth-century maps of Jarrow Slake (see illustrations 13 and 14 below). The slake was recorded in 1820 as a 'ruined haven or bason, half filled by the wash of sand and soil, which still receives the water of Tyne at flood, and is left dry at the ebb.'<sup>765</sup> Whilst the exact reasoning for the location is unrecorded it can be fairly surmised that the open nature of the slake would have afforded views from great distances guaranteeing as wide an audience for the spectacle as possible. Numerous broadsides from the region also note its proximity to the scene of the crime noting that it was 'nearly opposite the spot where the murder was committed and about 60 yards from high water mark.'<sup>766</sup> One ballad of the period, with artistic licence characteristic of the form, opined

'A pain now rends my heart, such as no tongue can tell,  
Prest with grief, prest with woe, all in this dreary cell  
And oh my wife and bairns how they will soon deplore  
To see me hung in chains before my own front door'<sup>767</sup>

As to its location in the water, numerous reports noted the authorities' awareness of locals' intentions to remove it and as such, its placement out of immediate reach would seem to be in line with a desire to make it much harder to recover. Any correlation with the proximity to water between Curry, Hazlitt and Jobling then would appear to be more coincidence than plan. Reporting, in March 1856, on the works being undertaken by the North-Eastern Railway Company at Jarrow Slake, later Tyne Docks, the *Newcastle Journal* recorded that, 'a day or two ago the last gibbet erected in this country was demolished by the workmen employed by the contractors'. In all three instances then of the gibbets' application between 1752-1832, the legacy of the structures long outlived their physical presence. In all cases

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<sup>765</sup> R. Surtees. 'The History and Antiquities of the County Palatine of Durham: Volume 2, Chester Ward, (London: Nichols and Son, 1820), pp66-93. *British History Online*, accessed March 21, 2019, <http://www.british-history.ac.uk/antiquities-durham/vol2/pp66-93>.

<sup>766</sup> *An Accounting of the Gibbeting of William Jobling*.

<sup>767</sup> *Lamentation of William Jobling who was executed at Durham, August 3<sup>rd</sup>, 1832 for the Murder of Mr. Fairless at Jarrow*. (n.d) J. Bell, *River Tyne Collection* Vol II, NCL.



the site of the gibbet became a topographical feature for years after and, in the case of Winter's Gibbet, still stands to this day having been 'lovingly maintained.'<sup>768</sup>

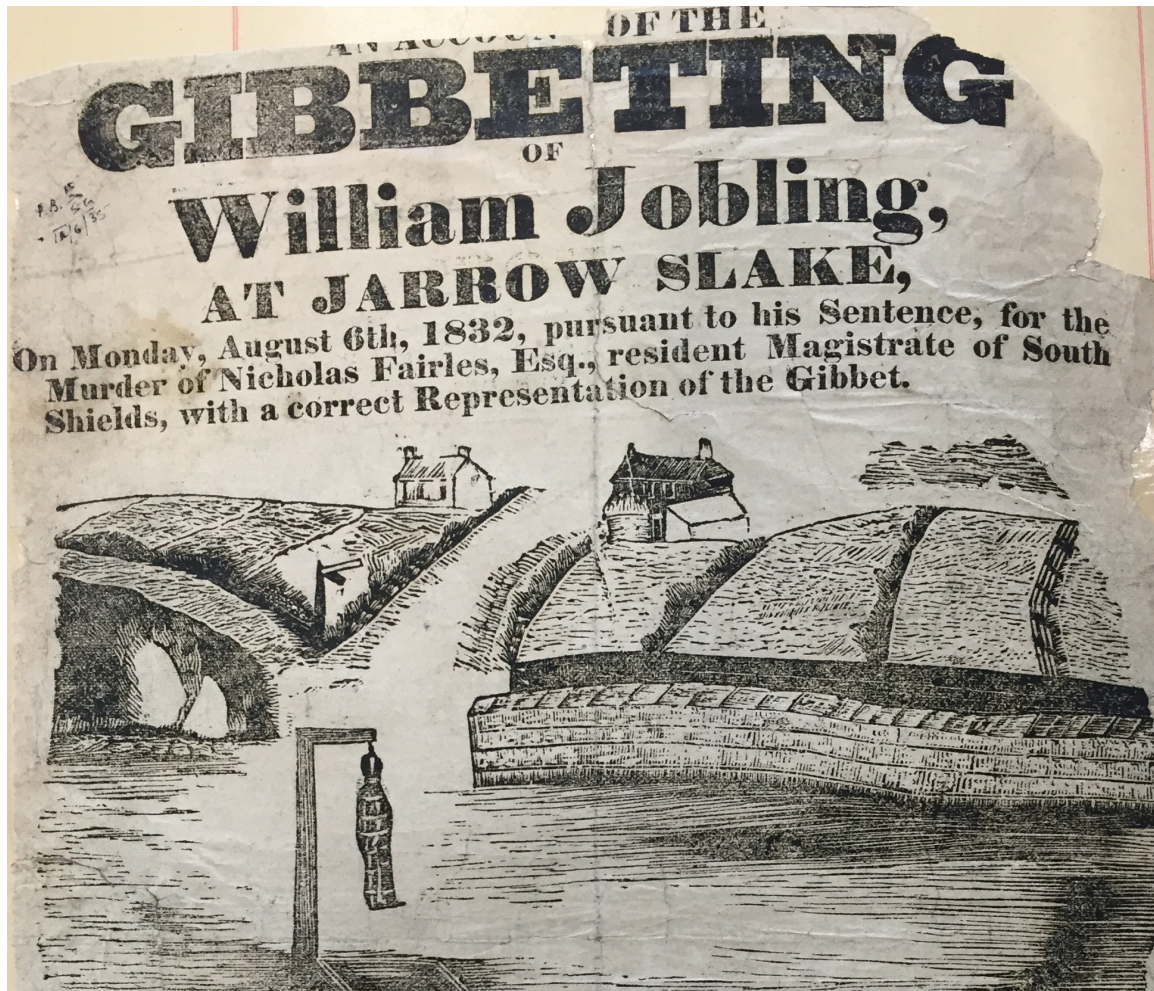


Illustration 12: An Account of the Gibbeting of William. Jobling, at Jarrow Slake, On Monday, August 6<sup>th</sup>, 1832, pursuant to his sentence, for the Murder of Nicholas Fairles. Esq., resident Magistrate of South Shields, with a correct representation of the Gibbet, NCL, Local Broadsides 1813-1834 (L029.3)

<sup>768</sup> Morgan and Rushton, *Rogues, Thieves*, p. 150.

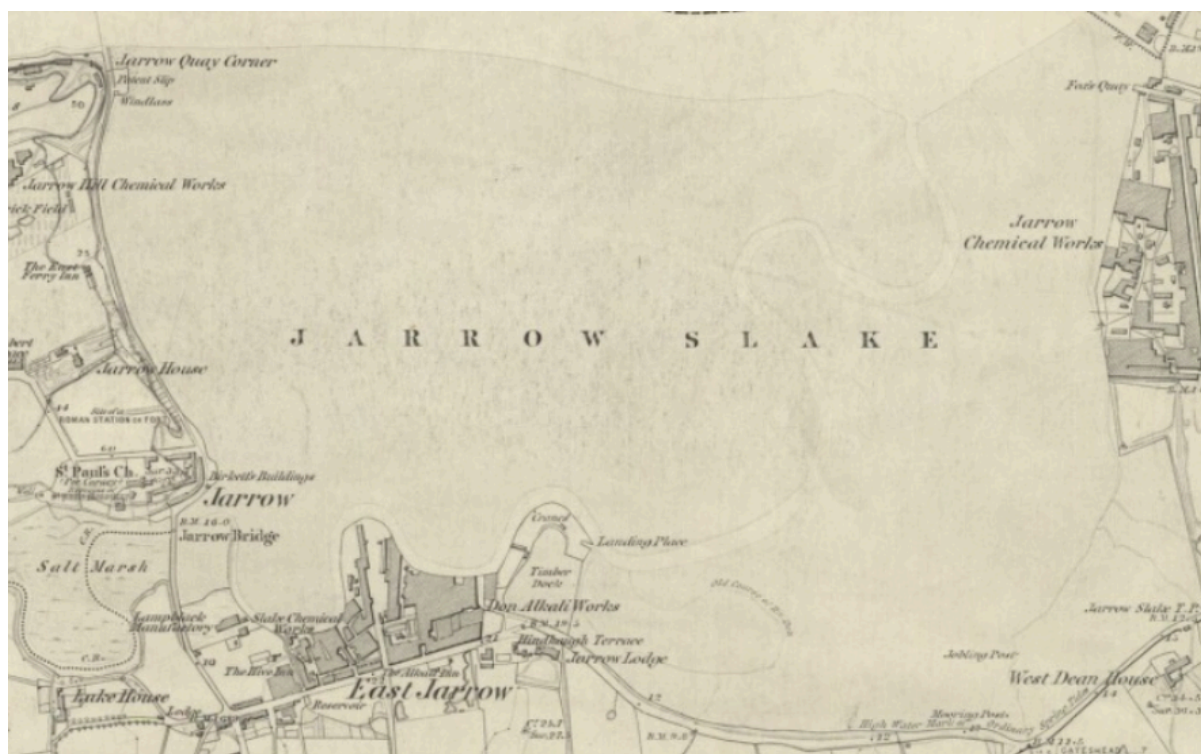


Illustration 13: Jarrow Slake. Durham III (includes: Hebburn; Jarrow; Walker; Wallsend.). Surveyed: 1856. Published: 1862. National Library of Scotland. Accessed online 17th March 2018. <https://maps.nls.uk/view/102341455>. Image reproduced under Creative Commons 4.0 licence.

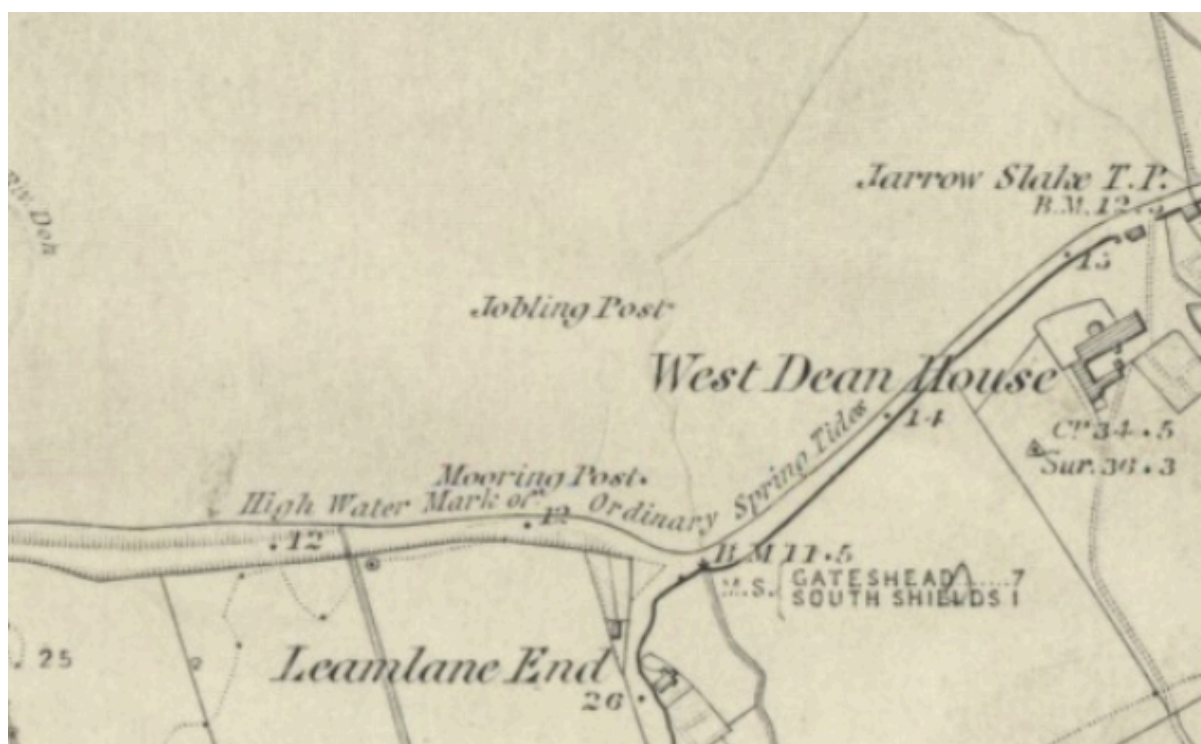


Illustration 14: 'Jobling Post' marked on Durham III (includes: Hebburn; Jarrow; Walker; Wallsend.). Surveyed: 1856. Published: 1862. National Library of Scotland. Accessed online 17th March 2018. <https://maps.nls.uk/view/102341455>. Image reproduced under Creative Commons 4.0 licence.



## Memory, Medicine and Shame: The multiple afterlives of the gibbet;

‘The Body was then hoisted up and secured, and left as a warning for the future, and a memento of the past.’<sup>769</sup>

As has been shown in broader national studies the relative longevity of gibbet structures, often made them the site of contested and transmogrified meaning over time. In the North East this is particularly true, as the gibbet’s structures had multiple ‘afterlives’ and have changed dramatically over time from sites of familial and communal shame to much cherished items of history, with touristic appeal.<sup>770</sup> The earliest reports of the gibbets in the region pay testament to the duality of the punishment as both a site of physical harm and wider societal and familial disgrace, more broadly in line with earlier shaming punishments.<sup>771</sup> As such it was as much a punishment for the immediate friends and family and in some cases local community of the condemned as it was for the criminal himself. Numerous instances appear to attest to the effectiveness of its role as a tool of wider social shaming.

In his local history, Sykes reported on a tale of one visitors’ pilgrimage to the gibbet of Robert Hazlitt on Gateshead Fell.

‘Soon after he was hung in chains, a person advanced in years, was observed several days to go and kneel before the gibbet, where he remained a considerable time, regardless of the wet weather. The last day in particular he prostrated himself on his bare knees for upwards of an hour and became so enfeebled that he could not rise till some people gave him assistance; after which he drew out of his pocket a hatband, and putting it on, said he then was easy, and took his leave of the melancholy spectacle before him. It was thought that this person was his father.’<sup>772</sup>

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<sup>769</sup> ‘An Account of the Gibbeting of Wm. Jobling, at Jarrow Slake.’

<sup>770</sup> S. Tarlow, ‘Curious afterlives: the enduring appeal of the criminal corpse’, *Mortality*, 21 (3) (July, 2016), pp.210-228.

<sup>771</sup> R. Shoemaker, *The London Mob: Violence and Disorder in Eighteenth Century England* (London: New York: Hambledon & London, 2004), pp. 79 – 110; For shaming punishments in the North East see Morgan and Rushton, *Rogues, Thieves*, pp. 126-132.

<sup>772</sup> Sykes, *Local Records*, p. 245.

The veracity of the tale is impossible to verify, but it was not without parallel. Numerous reports survive regarding the effect of the gibbeting of Andrew Mills in the late seventeenth on the surrounding community.

‘Popular tradition has it that the poor sinner was suspended alive—that day after day, as life ebbed fast and hunger grew keen, his cries of agony were heard for miles adjacent, till the people about Ferryhill and the neighbouring hamlets abandoned their homes, unable to bear his piteous wailing, and only returned when, death had silenced his voice and assuaged his sufferings.’<sup>773</sup>

Wider national research has shown that the practice of gibbeting alive was unheard of England in the eighteenth-century and nineteenth-century, but was not uncommon in ‘earlier centuries and in other parts of the world.’<sup>774</sup> However, as Hartshorne pointed out in his nineteenth-century study of the gibbet, this popular tradition surrounding Mills was more likely to be, ‘nothing but a free rendering necessary under the circumstances of the classical legends of Euphrasia and Evander, of Xantippe and Cimonos.’<sup>775</sup> Similarly reports of Mills being nursed on the gibbet with a milk-soaked sponge on the end of a stick, have echoes of the vinegar stained holy sponge rejected by Christ on the cross.<sup>776</sup>

Over time the transgressive shaming nature of the punishment could often dissipate, its symbolic presence ultimately transmogrifying over time. Recent scholarship has shown the extent to which symbols of punishment such as gibbets were often deemed to retain medicinal or healing powers.<sup>777</sup> This chimes with evidence in the North East as well. Writing of his childhood in late eighteenth-century Tudhoe,

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<sup>773</sup> ‘Andrew Mills,’ pp.66–67.

<sup>774</sup> In particular Tarlow noted the work of Sheridan on punishments meted out to rebellious slaves in the Caribbean, Tarlow, ‘The Technology of the Gibbet,’ 673; Richard B. Sheridan, *Sugar and Slavery: An Economic History of the British West Indies, 1623-1775* (Canoe Press, 1974).

<sup>775</sup> Hartshorne, *Hanging in Chains*; One variation of the tale of Mills had a young girl providing him sustenance through milk administered on a long stick. A story that perhaps can trace its origin to the succoring of Christ on the cross with a vinegar sponge. P. Low, ‘Crucifixion, Corbyn and the County Durham Christ,’ Accessed 17<sup>th</sup> June 2018. <https://lastdyingwords.com/2015/09/30/crucifixion-corbyn-county-durham-christ>

<sup>776</sup> ‘Matthew 27:48 ‘Immediately One of Them Ran and Got a Sponge. He Filled It with Wine Vinegar, Put It on a Staff, and Offered It to Jesus to Drink.,’ Accessed May 21, 2015, <http://biblehub.com/matthew/27-48.htm>.

<sup>777</sup> O. Davies & F. Matteoni, ‘A virtue beyond all medicine’: The Hanged Man’s Hand, Gallows Tradition and Healing in Eighteenth- and Nineteenth-century England’ *Social History of Medicine*, 28 (4), (November, 2015), pp. 686–705.

respected Naturalist Charles Waterton remembered the gibbet of Andrew Mills, known colloquially as Mills' Stob, noted

We often went to see it, and one afternoon, whilst we were looking at it, an old woman came up, took her knife from her pocket and then pared off a chip, which she carefully folded up in a bit of paper. She said it was good for curing the toothache.<sup>778</sup>

Nowhere is this transmogrification of meaning more apparent than in the case of William Jobling. In spite of the surreptitious removal of his body and the later destruction of the gibbet he has achieved something of a folkloric status in the region. In the last few decades alone, Jobling has been the subject of operas, had ales named after him and was even the subject of an art exhibition in which the production of a life-size replica of his gibbet cage.<sup>779</sup> Indeed, in 2012, he was posthumously celebrated and remembered by Jarrow Council who placed a sandstone plaque, at the cost of £3,000, on the former site of the Commercial pub, a site Councillor Eileen Leask stated was rumoured to have been where Jobling was brought 'by friends and family' shortly before being 'secretly buried.'<sup>780</sup> One hundred and eighty years after being condemned to the gibbet as a 'warning for the future', Jobling's body was being commemorated nearby. Remarking on the memorial Councillor Jim Perry stated that, 'while we will never know the full truth of the case, I think it's right and proper to commemorate Jobling.'<sup>781</sup>

Much as Jobling's gibbet has become the site of contested meaning so the once 'loathsome spectacle' of Winter's gibbet has retained the ability to be a source of

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<sup>778</sup> 'Charles Waterton, Naturalist', p. 406.

<sup>779</sup> 'The Blackened Man' Opera ran for three nights at the Royal Opera House and then went on to tour regionally. accessed September 8, 2016, <http://www.uktw.co.uk/archive/Opera/The-Blackened-Man/S566939150/>; Bede Gallery ran an exhibition around the gibbeting of William Jobling in October 1972, the centrepiece of the exhibition was a lifesize replica of Jobling's gibbet and the Gallery's Director, Vince Rea, created a series of prints detailing Jobling's trial, execution and gibbeting. A later book was published by the artist with a brief history of the slake and prints, V. Rea, *Jarrow Slake*, (Jarrow, Bede Gallery, 1998). The model of the gibbet made for the exhibition was eventually sold on December 9<sup>th</sup>, 2015 by Boldon Auction Galleries. The lot was entitled 'A Life Size Model of William Jobling, the Last Man to Be Gibbeted in England by Laurie Wheatley.' accessed September 16, 2016, <https://www.the-saleroom.com/en-us/auction-catalogues/boldon-auction-galleries/catalogue-id-srbold10012/lot-0b1cea6e-da51-4dd6-8e2e-a560009d937e>.

<sup>780</sup> M. Wainwright, 'Council remembers convicted murderer whose real crime may have been to go on strike', *The Guardian*, October 1<sup>st</sup>, 2012 accessed 17<sup>th</sup> March, 2018 <https://www.theguardian.com/uk/the-northerner/2012/oct/01/council-honours-convicted-murderer-coal-strike-1832>

<sup>781</sup> 'An Account of the Gibbeting of Wm. Jobling, at Jarrow Slake.'

conflict and tension in the region.<sup>782</sup> Numerous instances of its misuse, including the hanging of an effigy of a Sunderland FC fan have been reported in the last few years.<sup>783</sup> Similarly, following its latest restoration by the National Trust, the monument returned with the wooden head which had become a feature of it in later years, often the subject of pot shots by marksmen. Its absence caused consternation, with one Elsdon Councillor stating, 'If we got it back, it would be something positive for the village.'<sup>784</sup> However, in 2011, a threat to Winter's Gibbet paid true testament to the strength of feeling still attached to such structures in the region. An application was lodged by Air Farmers Limited to build nine wind turbines close by to the structure, a development called Middle Hill Renewables LTD. The proposal caused local uproar when planning consultant Bob Morgan met with Elsdon's Parish Councillors. Morgan was reported to have called the gibbet nothing more than a 'Victorian Disneyland.' Reacting to the comments Councillor Stephen Steven Bridgett told the Northumberland Gazette that he was 'absolutely flabbergasted' at the comments stating that 'I nearly drew blood from having to bite my tongue at times.'<sup>785</sup> Councillor Bridgett was not alone, as an action group, Middle Hill Action Group, was set up to protect it. This 'loathsome spectacle' of which Sykes reported in 1822 had now become a lovingly restored feature of the landscape.<sup>786</sup>

## Conclusion

The gibbet itself was a notably different symbol of punishment to the surgeon's slab. If the dissection was a public punishment one chose to see the gibbet was a spectacle one couldn't avoid. In Dickens' *Great Expectations*, it is the gibbet that scars the landscape of the marshes where Pip lives. Even in its empty state,

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<sup>782</sup> E. Mackenzie.,

<sup>783</sup> 'Monument has disappeared', *Northumberland Gazette*, 22<sup>nd</sup> June 2014 accessed 17<sup>th</sup> May 2018 <https://www.northumberlandgazette.co.uk/news/monument-has-disappeared-1-6682897>; 'Sunderland supporter effigy found hanged in sick prank', *Sunderland Echo*, June 2<sup>nd</sup>, 2012 accessed 11<sup>th</sup> December, 2017 <https://www.sunderlandecho.com/news/sunderland-supporter-effigy-found-hanged-in-sick-prank-1-4609932>

<sup>784</sup> 'Missing head has Elsdon villagers in a spin', *Hexham Courant*, 12<sup>th</sup> January, 2017 accessed 14<sup>th</sup> June 2018, <https://www.hexham-courant.co.uk/news/16619026.missing-head-has-elsdon-villagers-in-a-spin/>

<sup>785</sup> 'Fury at Victorian Disneyland Slur', *Northumberland Gazette*, 11<sup>th</sup> August, 2011.

<sup>786</sup> M. Wainwright, 'Council remembers convicted murderer whose real crime may have been to go on strike', *The Guardian*, October 1<sup>st</sup>, 2012 <https://www.theguardian.com/uk/the-northerner/2012/oct/01/council-honours-convicted-murderer-coal-strike-1832>.

deprived of its prey, it is still the source of imagined terrors and marked horror. On seeing a limping convict approach from the marshes, Pip imagines him as if returning to the gibbet 'to hook himself up again.'<sup>787</sup> The nature of the gibbet as a punishment was then somewhat distinct from execution and its post-mortem counterpart dissection. Unlike dissection and execution, the gibbet was a long-lasting physical presence on the landscape and as a result frequently became the site of contested and transmogrified meaning. As has been shown in earlier chapters, by the late eighteenth-century the gallows structures in the North East were raised on the day of execution and removed immediately after, even at Durham where they had to be attached to a building after 1816, they were dismantled and stored away immediately after use (the only visual reminder being two square plugs for the gallows supports). Gibbets however, were intended to last. As was the case nationally, so in the North East the structures themselves frequently outlasted the body they held and in one case in particular, still stand to this day. In one very real sense then the gibbet was a punishment experienced far longer and more widely than any other in this period.<sup>788</sup>

In all three instances of its use the crimes punished are in line with broader national trends. However, there is a notable link in all three cases with attacks on officials of the judiciary or, in the case of Winter, a determined effort by a Justice of the Peace to tackle a recidivist criminal. In this sense the crimes have exemplary element to them which appears in line with the decisions undertaken elsewhere as to when the gibbet was administered. The relative paucity of their use, in comparison with dissection can be put down to a number of reasons. Firstly, the medical profession's demands on corpses for anatomical instruction far outweighed the needs of authorities to publically display the criminal corpse. This is particularly apparent in

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<sup>787</sup> C. Dickens, *Great Expectations* (Estes and Lauriat, 1881), p. 25.

<sup>788</sup> The legacy of cases like Hazlitt's Winter's and Jobling's have been remarkably far reaching. Consider the secrecy and attention to detail of the US authorities' burial of Osama Bin Laden in 2011. Realising the potential for his body to become 'a shrine and a place of pilgrimage for his followers,' a veil of secrecy covered the operation and little is known outside the limited details, all be it heavily redacted, that have emerged as a result of persistent Freedom of Information Acts. As such his burial is further testament to the power of the criminal corpse and its tendency to become a site of deeply contested meaning. 'Osama Bin Laden Dead: Body Buried at Sea,' *Daily Telegraph*, May 2, 2011 accessed 7th September 2018 <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/8487715/Osama-bin-Laden-dead-body-buried-at-sea.html>; 'Secret Details of Bin Laden Burial Revealed', Aljazeera Online accessed September 8, 2016, <http://www.aljazeera.com/news/americas/2012/11/2012112243823204328.html>.

Newcastle's decision never to undertake the punishment, despite having the availability of the Town Moor. Secondly, it was vastly expensive. The relatively small cost of dissections, as has been shown by Tarlow et al. and in the previous chapter, were recovered by the surgeon's charging a fee for lectures. Gibbeting however had a large cost initial construction cost and required frequent maintenance over time. Furthermore, as cases such as Jobling's have shown, there was the additional expense of large numbers of guards and military personnel paid to guard the site for a number of weeks. Finally, the gibbet post's relative longevity meant that only one was needed in a particular area. Even shorn of their prey, the gibbets had the ability to terrify and arguably, in the case of Winter's Gibbet, still do.

Where then does the gibbet as a post-mortem penal option sit in broader perceptions of the changing nature of punishment. In one sense its slow declining use from the penal arsenal could be tied to a growing abhorrence to public spectacles of violence, most commonly associated with a 'civilizing' theory. However, its disappearance in the North East was arguably driven as much by its increasing ineffectuality and expense as opposed to any overriding abhorrence to it. Indeed, the longevity of Winter's Gibbet in Elsdon and its retention to this day are arguably testament to its lasting draw. Its comparatively late revival in the case of William Jobling is less indicative of a disconnected North East, and more an anomaly of legislative change. Indeed, the sentencing of James Cook in Leicester mere weeks later, despite the punishment having fallen into disuse in the previous two decades, adds further proof to this assertion. This is not to suggest that it had lost any of its punitive power to offend and shame the immediate friends and family of the condemned, as the surreptitious recovery of Jobling's gibbet attests to. Despite the clear published warnings of the punishment attending such an act of recovery, great efforts were gone to to recover the body and it remains unfound. This then was always a punishment that evoked a visceral response in some quarters but also in other instances gardened a large audience. Shortly after Jobling's recovery James Cook's gibbet was removed mere days after its raising, on the orders of the Home Office, following complaints by neighbouring residents following the vast influx of people to witness it, some reports noting 'thousands of persons were attracted to the spot' on

the first day alone.<sup>789</sup> In future, if the criminal corpse were to suffer additional punishment it would have to be both out of sight and out of mind.

In essence then, the combination of the gibbet's physical longevity and visual barbarity meant that in all cases in the North East, it far outlived its original purpose. Even after its removal, its previous existence and location became the site of multiple meanings, competing narratives and topographical record. In some instances the very sentence itself turned a felon into a folkloric hero, nowhere moreso than in the case of William Jobling. His place in the local annals is testament to the failed intentions of the punishment, a man whom over two hundred years later is the subject of operas, gallery exhibits, posthumous recognitions by the local authorities and whose replicated body is still a prized auction lot. The gibbet, as so often did the gallows, made a martyr of a malefactor and it was arguably this, as much as its increasingly odious presence in the local landscape, that led to its removal from the state's arsenal. However, as the final chapter of this thesis will assert the removal of gibbeting by the Hanging in Chains Act 1834 was not, as is so often asserted, to be the end of post-mortem punishment on the criminal corpse.

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<sup>789</sup> *Newgate Calendar*, 'JAMES COOK, Executed 10th of August, 1832, for the Murder of Mr. Paas, whose Remains he attempted to destroy by Fire'. Available at <http://www.exclassics.com/newgate/ng614.htm> (Accessed 07 July 2019).

## Chapter Six:

### **‘The Fetid, Slushy Pickle of Rotten Humanity’: Burial behind the Prison Wall.**

‘It is strange, but in one custom we are more barbarous than our ancestors in bygone days. It is the toll of the Felon’s Plot....Prison Officials who have assisted in the last act of a murder drama will agree that it is a mournful business.’<sup>790</sup>

‘Oh leave me, ye phantoms, fiends – all I now crave  
Is to let me sink peacefully into the grave.  
The grave – oh! There’s no grave for the murderer foe  
His crime has a shelter denied in the ground:  
Oh! why am I living! My beating heart burst,  
My body unburied, my bones are accursed.’<sup>791</sup>

‘Punishment then, will tend to become the most hidden part of the penal process. This has several consequences: it leaves the domain of more or less everyday perception and enters that of abstract consciousness; its effectiveness is seen as resulting from its inevitability, not from its visible intensity.’<sup>792</sup>

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<sup>790</sup> ‘An Unnamed Prison Official’, *Nottingham Evening Post*, 24<sup>th</sup> October, 1925.

<sup>791</sup> ‘Trial Of James Cook’, *Leicester Journal*, 10<sup>th</sup> August, 1832

<sup>792</sup> Foucault, *Discipline and Punish*, p. 9.



On the eve of his execution in 1844, artillery pensioner Mark Sherwood was deeply troubled. It was not, however, the impending fate of the deadly 'drop' that was foremost in his thoughts, but the punishment that was to follow; burial within the prison walls. In his last days, reports emerged that Sherwood had 'expressed a wish' that his grave 'might be deep' as he 'hoped his remains would not be allowed to be disturbed'. Additionally, he requested that 'if not contrary to any legal regulation' the burial service be read over his body. Sherwood's good relations with the prison staff had been previously noted in local newspapers, so it was not unjustified to think provision could have been made for both.<sup>793</sup> However, reports following his execution noted that only one of his requests was met, namely that the grave was made 'seven feet deep', the burial service however was not read. Sherwood's dread was testament to a much longer line of fear towards the provisions of burial for the capitally condemned. Whilst Sherwood may have been lucky enough to have escaped the former ignominy of dissection or hanging in chains, he knew that his burial arrangements were as much a part of his sentence as the scaffold itself. In this sense Sherwood sits in a long line of capitally condemned felons who, even after the threat of dissection or gibbeting had disappeared, knew that their punishment did not end with death.

This chapter argues that prison burial was deemed as much a part of the death sentence as the execution itself and its continuation after the attendant post-mortem punishments of dissection and gibbeting heralded a new period of state ownership over the body in which families could no longer lay claim to their dead. This area of inquiry is particularly timely as post execution punishment has recently become the focus of detailed scholarly attention, producing fascinating new studies on, amongst other things, the passage of failed criminal dissection bills and the technologies and locations of gibbets.<sup>794</sup> However, in its prioritisation of the post-mortem punishments of dissection and hanging in chains, the provision of prison burial as a punishment has been largely overlooked. As Ward said of previous studies of execution the end point has 'tended to end be the hanging tree, rather than the dissection table' so

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<sup>793</sup> Sherwood was a retired Royal Artillery Pensioner and as one paper noted, the Turnkey of Newcastle Gaol, one Hadfield, had served in the same regiment at a different time, as a result it was reported that the two 'got on well.' *Newcastle Journal*, 24<sup>th</sup> August, 1844.

<sup>794</sup> R. Ward, 'The Criminal Corpse', p. 66; Tarlow, 'Technology of the Gibbet', p. 668–699.

recent pathbreaking studies have tended to end on the surgeons' slab or at the gibbet cage rather than the grave.<sup>795</sup>

This chapter will first seek to place the denial or undermining of traditional burial rites as punishment in its historical context. It will show that the punishment had a long history that predated the period of this study, but was significantly further entrenched in numerous legislative Acts across the eighteenth and nineteenth century. Furthermore, it will show how its rise was concomitant with a decrease in capital statutes that meant that only the most 'heinous' crimes were subject to the punishment by the early to mid-nineteenth century. In essence, a once exemplary sentence had become the punishment for all capital cases. Having set the punishment in context, the chapter will then turn its attentions to the burial procedures for condemned felons in the North East of England with particular focus on its application post 1834. With reference to the North East, it will be shown that prison burial was as feared a punishment as its post-mortem counterparts. In continuing long after the 1832 and 1834 Acts that rescinded other post-mortem punishments, it thus brings into question any simple and steady teleological narrative of a shift towards a more 'civilised' system of punishment. Instead what we arguably see, is what Richardson so expertly noted as the 'tightening official grip on the body of the offender.'<sup>796</sup>

### **Prison burial in context.**

The denial or disgrace of particular elements of burial had long been a punishment attached to various ruptures of societal norms; perhaps most notably in the treatment

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<sup>795</sup> Ward, 'The Criminal Corpse', p. 66. There are notable exceptions in all of this, not least Hurren's detailed work on the punishment of dissection in which she has noted numerous instances of the provision of the body for burial post-dissection. Similarly, King's work on the criminal corpse passed comment on the continuing punishment of burial P. King, *Punishing the Criminal Corpse, 1700-1840: Aggravated Forms of the Death Penalty in England* (Springer, 2017). Ironically of the studies that have gone past the Anatomy and Hanging in Chains Act the focus has tended to skip the grave and look to the 'afterlives' of criminals. Tarlow, 'Afterlives', p. 210-228; McCorristine, 'Dark Value', pp.1-7. In his study of the William Corder and the infamous Red Barn Murder, McCorristine details a 'legend' that Corder's skull was surreptitiously removed from West Suffolk Hospital by one Dr. Kilner, but it was believed the act 'unleashed Corder's supernatural power' and brought the owner bad luck until it was 'given a Christian burial'. S. McCorristine, *William Corder and the Red Barn Murder: Journeys of the Criminal Body*, (Palgrave Macmillan, 2014) p. 63.

<sup>796</sup> R. Richardson, *Death, Dissection and the Destitute: The Politics of the Corpse in Pre-Victorian Britain*, New edition (London: Penguin, 1988), p. 75.

of suicide.<sup>797</sup> In Ancient Greece intentionally leaving a body unburied was an 'atrocious', however actions such as this, deemed abhorrent in ordinary Greek society, were 'accepted as traditional punishments' on criminals.<sup>798</sup> Similarly, writing of the experience in Medieval and Renaissance Europe, Merbeck recorded that,

'It was the fate of criminals who were hanged from the gallows or displayed publicly on the wheel to be denied proper Christian burial, despite the protestations of family members, whose honour was also impaired by judicial harshness on this issue.'<sup>799</sup>

The location, occasion and rites performed were all essential elements in a 'proper' burial and the denial or denigration of one or all, was a fate feared by many, chief amongst them criminals. Ward, amongst others, has convincingly argued that we can be in little doubt that the denial of burial had a deeply chastening effect on the condemned and their immediate family and friends.<sup>800</sup> Even Gatrell, who argued that the 'concern of the dying with the manner and place of burial' was on the wane by the late seventeenth century, conceded that popular beliefs regarding the body's integrity as being key to its resurrection meant that 'people worried' about the body's treatment after death.

Across the eighteenth century and nineteenth century various legislation was enacted that further entrenched the denial of burial as a greatly feared post-mortem punishment. As Gatrell has powerfully argued, it was only owing to the strength of the 'socially shared understandings' of what a 'decent burial was' that the authorities gained punitive power in 'thwarting these expectations cruelly.'<sup>801</sup> Similarly,

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<sup>797</sup> For a detailed assessment of the exemplary burial practices in cases of suicide See Tarlow, *Golden and Ghoulish*, pp. 16-20; G.B. Ferngren, 'The Ethics of Suicide in the Renaissance and Reformation' pp. 151-181 in B. A. Brody (ed.), *Suicide and Euthanasia: Historical and Contemporary Themes* (Netherlands: Kluwer, 1989); A. Kastner & E. Luef, 'The Ill-Treated Body: Punishing and Utilising the Early Modern Suicide Corpse' in R. Ward (ed.) *A Global History*, pp. 147-169. For the commonality of the practice of roadside burials of suicides see R. Halliday, 'The Roadside Burial of Suicides: An East Anglian Study', *Folklore*, 121 (1) (2010), pp. 81-93. Finally, for the treatment of the cases of suicide in the North East of England, particularly in the press, in this period see R. Houston, Fact, Truth, and the Limits of Sympathy: Newspaper Reporting of Suicide in the North of England, circa 1750-1830, *Studies in the Literary Imagination* 44 (2) (Fall, 2011). pp. 93-108.

<sup>798</sup> D. G. Kyle, *Spectacles of Death in Ancient Rome* (Routledge, 2012), p. 135.

<sup>799</sup> M. B. Merbeck, *The Thief, the Cross, and the Wheel: Pain and the Spectacle of Punishment in Medieval and Renaissance Europe* (Chicago: University of Chicago Press, 1999). p. 214.

<sup>800</sup> R. Ward, 'Introduction' in R. Ward (ed.) *A Global History*, (Palgrave MacMillan, 2015), p. 13.

<sup>801</sup> Gatrell, *Hanging Tree*, p. 87.

Richardson noted, of these acts, that their 'intention was to deny the wrongdoer a grave.'<sup>802</sup> As with its better known post-mortem punishment counterparts, dissection and hanging in chains, the denial of burial long predated the Murder Act 1752, but was arguably first entrenched by it. Provisions of the Act stated that in 'no case whatsoever the body of any murderer shall be suffered to be buried.' Although recent studies have shown that occasional provision was made for a post-dissection burial of sorts, in the majority of cases an ignominious burial awaited any prisoner convicted of murder.<sup>803</sup>

Previous studies have noted earlier advocates of prison burial or special demarcated areas for the burial of executed felons. King referenced Hanway's calls in 1775 for a 'strongly walled in ... malefactors burial place' to be placed by 'a road near the entrance to a city, such as Tyburn' a final resting place which he believed 'could not fail of making some impression' most notably on the minds of potential future offenders.<sup>804</sup> Similarly, In his work on late eighteenth century moves to extend the punishment of dissection to lesser crimes than murder, Ward evidenced the power of denial of burial. In his rebuttal to a bill to extend dissection, Lord Loughborough noted the change in criminal behaviour during trial, acknowledging that when a condemned felon heard that 'their bodies were to be deprived of sepulture (sic)....they grew suddenly pale, trembled, and exhibited a visible appearance of the extremest [sic ] horror.' Given the perceived power of this punishment, Loughborough thought an extension of it to lesser crimes would 'destroy this salutary effect, by making the deprivation of the rights of burial a common and an ordinary consequence of every conviction of almost every capital offence?'<sup>805</sup>

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<sup>802</sup> Richardson, *Death, Dissection and the Destitute*, p. 36.

<sup>803</sup> Murder Act 1752 (25 Geo 2 c 37); 'Little will be left for burial, less than one third of the original corpse. Remaining flesh and bones sewn together with a large surgical needle then wrapped in a woolen shroud used as a winding-sheet and buried in a common grave, normally no less than six deep. Lime thrown on each body to accelerate decomposition. No visible sign of burial above ground-level; social death.' Elizabeth T. Hurren, *Dissecting the Criminal Corpse*, p. 153.

<sup>804</sup> J. Hanway, *The Defects of Police: The Cause of Immorality and the Continual Robberies Committed, Particularly in and about the Metropolis ... with Various Proposals for Preventing Hanging and Transportation ... Observations on the Rev. Mr. Hetherington's Charity* (London, 1775) cited in King, *Punishing the Criminal Corpse, 1700-1840*, p. 131.

<sup>805</sup> Lord Loughborough HOC Papers, PR, 5 July 1786, p. 160 cited in Ward, 'The Criminal Corpse', p. 81.

Following its entrenchment in the Murder Act, the next major legislative change to the punishment of burial came via the Anatomy Act of 1832. The Act that removed dissection from the penal arsenal, stated that hereafter

‘In every Case of Conviction of any Prisoner for Murder the Court....shall direct such Prisoner either to be hung in chains or buried within the Precincts of the Prison in which such prisoner shall have been confined.’<sup>806</sup>

King has argued convincingly that the House of Lords’ seeming inability to ‘give up the idea that murder should be punished more severely than other capital offences’ introduced this new form of ‘very-private’ post-execution punishment.<sup>807</sup> The degree to which the provision of prison burial was widely known in the immediate aftermath of the Act is questionable. As noted in the case of William Jobling, in chapter five, the presiding judge in his summation appeared not to be aware of any post-mortem penal option other than hanging in chains. If further proof were needed of the punitive power of the denial of burial, the surreptitious theft of Jobling’s body from the gibbet mere weeks after its erection pays testament to the efforts some would go to provide a proper burial for the condemned, despite numerous handbills and broadsides printed at the time carrying the express warning of seven years transportation for the crime. On reporting the body stolen from the gibbet one broadside noted

Even at the time he was hung up it was publicly rumoured that the pitmen, being a spirited set of men, would never allow a comrade and fellow workman to hang in such a degraded situation, even before the doors of his intimate friends and relatives.<sup>808</sup>

Shortly after Jobling’s gibbeting, James Cook was to receive the ignominious, post-humous, title of the final felon gibbeted in England. Reports of the trial paid further testament to the fear of the gibbet, but perhaps more powerfully to the lack of a final resting place.

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<sup>806</sup> The Anatomy Act 1832 (2 & 3 Will. IV c.75).

<sup>807</sup> King, *Punishing the Criminal Corpse, 1700-1840*, p. 163.

<sup>808</sup> *The Particulars of the Gibbet being stole away from Jarrow Slake, Late on Friday night or early on Saturday Morning, September 1<sup>st</sup>. 1832, by some Persons yet unknown*. (Newcastle: Douglas and Kent, n.d.), RTC.

‘Oh leave me, ye phantoms, fiends – all I now crave  
Is to let me sink peacefully into the grave.  
The grave – oh! There’s no grave for the murderer foe  
His crime has a shelter denied in the ground:  
Oh! why am I living! My beating heart burst,  
My body unburied, my bones are accursed.’<sup>809</sup>

Two years following Cook’s post-mortem punishment the Hanging in Chains Act, (1834) removed the gibbet. In an early debate on the bill, the MP for Tower Hamlets, Stephen Lushington stated that,

‘A more simple Act it was impossible to devise. He was happy to say, that it was one on which the whole of that House appeared to be unanimous; and their opinion, he was fully convinced, was in perfect conformity with the feelings of the people of England, Scotland, and Ireland, which was only another proof of the increased intelligence and civilization of this nation.’<sup>810</sup>

This bill ‘perfectly in conformity with the feelings of the people of England’ retained an element of post-mortem punishment and disgrace arguably far more feared by the condemned, the punishment of burial behind the prison wall.

By the second half of the nineteenth century the movement for the wholesale abolition of execution had gained a pace and warranted a Commission on Capital Punishment. Although by no means a primary focus of the debate, the punishment of burial made several appearances in evidence given. In his letter to the Commission, one-time MP for County Cork and Judge in Ireland, Baron Deasy, noted of his experience from the bench that,

‘In Ireland there is a strong anxiety to be buried by and with the family and friends, and the prevention of such burial adds to the horror of death by the hand of the public executioner. In one case before me the unhappy culprit, when asked by the officer of the Court whether he had anything to say why sentence of death should not be passed, implored of me to allow his body to be given to his

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<sup>809</sup> ‘Trial of James Cook’, *Leicester Journal*, August 10<sup>th</sup>, 1832.

<sup>810</sup> ‘Hanging Murderers in Chains’, HC Deb, 13<sup>th</sup> March, 1834 vol 22 cc155-7. Accessed 13<sup>th</sup> March 2017 <https://api.parliament.uk/historic-hansard/commons/1834/mar/13/hanging-murderers-in-chains>

friends, and said that he was quite satisfied to die if that request was complied with.'

Owing to its perceived deterrent power the judge concluded that 'it is advisable to retain that part of the sentence which directs the burial of the body within the precincts of the gaol.' Baron Deasy went on to raise a further issue that he believed would arise from the release of the criminal body to friends and family. He argued that the funeral could become,

'the occasion of a most unseemly and injurious display of...sympathy...and the remains of the culprit would be treated rather as those of a man who had died for the redress of some popular grievance, than those of one whose life had been justly forfeited to his country's laws.'<sup>811</sup>

In a similar vein E. Hayes, a judge, suggested that 'on no account should the body be given to the disposal of the convict's friends.'<sup>812</sup> Deasy's hypothesis and Hayes' fears were given greater substance by evidence provided from New South Wales, Australia. Writing of his experience on the bench in Sydney, where execution had been undertaken behind the prison walls since before his appointment, Judge Edward Wise stated that the 'existing system is the best', except in one respect.<sup>813</sup> That caveat being the provision for return, subject to request, of the condemned body to family for private interment. Wise recalled the case of the execution of Henry Manns at Darlinghurst Jail in 1863. Reports note that Mann's mother, on application to Dr. Wilson M.P., had been granted the right to take her son's body after execution, for private interment at Campbelltown.<sup>814</sup> However, Wise railed that, 'his body was, I believe, exhibited in a public house and visited by hundreds before its final removal to the place of burial.'<sup>815</sup>

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<sup>811</sup> *Report of the Capital Punishment Commission: Together with the Minutes of Evidence and Appendix* (H.M. Stationery Office: Eyre & Spottiswoode, 1866), p. 615. Accessed 14<sup>th</sup> January, 2018, <https://parlipapers.proquest.com/parlipapers/docview/t70.d75.1866-042088?accountid=14154>

<sup>812</sup> E. Hayes, *Report of the Capital Punishment Commission*, p. 617.

<sup>813</sup> E. Wise, *Report of the Capital Punishment Commission*, p. 591. For more on Wise's Judicial career see J. A. Ryan, 'Wise, Edward (1818–1865)', in *Australian Dictionary of Biography* (Canberra: National Centre of Biography, Australian National University, n.d.), Accessed 14<sup>th</sup> March 2018 <http://adb.anu.edu.au/biography/wise-edward-4877>

<sup>814</sup> 'Execution of Henry Manns', *Manaro Mercury, and Cooma and Bombala Advertiser*, 3rd April, 1863. Accessed 7<sup>th</sup> April 2018 <https://trove.nla.gov.au/newspaper/article/112675812>

<sup>815</sup> *Report of the Capital Punishment Commission*, p. 591.

Whilst reports from the time do not detail the behaviour around the body, numerous accounts concur as to Wise's assertion, noting both the fears of the hearse driver owing to 'immense crowds' that awaited the body and the arrival of the body at the Pack Horse Inn and its subsequent removal from the 'prison shell to the coffin Mr. Loseby had prepared.'<sup>816</sup> Although only passing mentions in a report just shy of 700 pages, the sentiments expressed on burial were all in agreement that it still served a useful deterrent purpose.<sup>817</sup> The fears expressed around its potential removal were in a much longer line of anxieties around the criminal becoming a celebrity or martyr if their body was released.<sup>818</sup> The danger of the criminal corpse therefore, despite the 1832 and 1834 Acts rescinding post-mortem punishments, was still alive and well in the debate on removing execution from public sight.

Testament to these fears, raised in the report can be seen in the punishments further enshrinement in the Capital Punishment Amendment Act of 1868 that moved execution behind the prison wall. Section VI of the Act provided the following instructions regarding burial,

'The body of every offender executed shall be buried within the walls of the prison within which judgment of death is executed on him: Provided, that if one of Her Majesty's Principal Secretaries of State is satisfied on the representation of the visiting justices of a prison that there is not convenient space within the walls thereof for the burial of offenders executed therein, he may, by writing under his hand, appoint some other fit place for that purpose, and the same shall be used accordingly.'<sup>819</sup>

The specifications of the 1868 Act represented the culmination of a century long tightening of the state's control over the body of the condemned. In one sense, the

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<sup>816</sup> 'Execution of Henry Manns', *Manaro Mercury, and Cooma and Bombala Advertiser*, 3rd April, 1863.

<sup>817</sup> The only slight note of divergence came in evidence provided from other countries practices, with regards to execution and private burial. Writing of the Spanish system it was noted that 'if...friends or relations beg the body for this purpose it is delivered to them', however it was further noted that 'the code prohibits the funeral being celebrated with pomp', *Report of the Capital Punishment Commission*, p. 516.

<sup>818</sup> Testament to the validity of this fear can be seen in recent studies around the many instances of post-mortem 'celebrity' and the 'curious afterlives' of the criminal corpse, some that are still very much with us today. Penfold-Mounce, 'Consuming criminal corpses', pp. 250-265; Tarlow, 'Curious Afterlives', pp. 210-228.

<sup>819</sup> Capital Punishment Amendment Act 1868 (31 & 32 Vict. c.24).



legislative entrenchments of the punishment of burial were initially something of an administrative afterthought, an addendum to the more public punishments of the surgeon's slab or the gibbet cage. However it was an efficacious sentence that carried neither the public horror of exposure to a body whilst simultaneously removing the ignominious attachment to criminality that had denigrated the burgeoning science of anatomy. Prison burial offered a post-mortem punishment both out of sight and out of mind. In that sense the punishment sits neatly in a Foucauldian reading of punitive reform, a punishment in which 'its effectiveness' was 'resulting from its inevitability, not from its visible intensity.'<sup>820</sup>

## The Rise of Murder

Much as Richardson asserted of the Anatomy Act, that a punishment once 'exclusively' for executed criminals had now become one for the poor, so the denial of the return of the criminal body for burial had gone from a punishment for the worst capital crime to a punishment for all capital crimes. However, this only represents half of the story and in any attempt to place the punishment of prison burial in context, the change in capital punishment patterns has to be noted. Murder had long been established, as a crime unique above all others. The 1752 Murder Act had gone a long way to entrenching this view and recent work has shown numerous failed attempts to extend the Act's punishments to lesser crimes.<sup>821</sup> Its unique status in criminal law was further entrenched in the 1820s by a series of legislative Acts that simultaneously led to a 'dramatic reduction' in capital statutes. Acts such as *The Judgement of Death Act* (1823) in which judges were given discretion to forgo the death sentence in all cases but treason and murder, helped engrain a long established popular sentiment that murder was a crime in a category of its own.<sup>822</sup> The 1830s onwards therefore marked the start of an era in which the full scale moral

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<sup>820</sup> Foucault, *Discipline and Punish*, p. 9.

<sup>821</sup> Ward, 'The Criminal Corpse', pp. 63-87.

<sup>822</sup> J. Gregory & J. Stevenson, *The Routledge Companion to Britain in the Eighteenth Century* (Routledge, 2012), p. 194; In his work on Peel, the Home Secretary responsible for many of these acts, Devereaux has argued that we should 'dispense with any image we may entertain of Peel as a humanitarian reformer.' In this sense, he is in line with earlier studies of Peel which showed that his restriction of the death penalty was perhaps not far enough for the prevailing opinion. S. Devereaux, 'Peel, Pardon, and Punishment: The Recorder's Report Revisited', in *Penal Practice and Culture, 1500-1900: Punishing the English* (Palgrave MacMillan, 2004), p. 278.

rejection of the murderer took hold. In a remarkable essay, on observing an execution in Glasgow, Alexander Smith captured the prevailing sentiment perfectly.

‘when the law has become so far merciful; when the punishment of death is reserved for the murderer; when he can be condemned only on the clearest evidence...a public execution is not vulgar, it becomes positively sublime.’<sup>823</sup>

In acknowledging the rise of murder as the backdrop to parliamentary entrenchments of burial as a post-mortem punishment, we reach a curious concurrence. Where Lord Loughborough feared, in 1786, that the extension of denial of burial to lesser crimes would deaden its salutary effect, so Baron Deasy’s evidence some 80 years later acknowledges this as its statutory *raison d’être*. Loughborough’s fear that it would lose its power by ‘making the deprivation of the rights of burial a common and an ordinary consequence of every conviction of almost every capital offence?’ were counterbalanced by the fact that, effectively by 1830, a punishment that should only be exclusively for murder, thanks to radical retrenchment of capital statutes, now was.<sup>824</sup>

### **‘A source of infinite pain to their living friends’: The parlous state of North East burial grounds**

The application and undertaking of prison burial in the North East must be seen in the context of burial provision in general. In the late eighteenth and early nineteenth century burial both nationally and in the North East region was arguably, in and of itself, a punishment for many of the nation’s poorest. Previous studies have noted the ‘feared and loathed’ pauper funeral and the intense efforts of the labouring poor to avoid the ignominy of such a send-off.<sup>825</sup> Others noting the importance placed on

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<sup>823</sup> A. Smith, ‘A Lark’s Flight’, in A. Smith (ed.), *Dreamthorp: A Book of Essays Written in the Country*, (London: Strahan & co, 1863), p. 95. The Series of essays in which ‘A Lark’s Flight’ first appeared were first published in 1863, it is worthy of note that Smith was born in 1830 and he mentions the execution was ‘more than twenty years ago’, so he must have been a very young boy at the time.

<sup>824</sup> Lord Loughborough, HOC Papers, PR, 5 July 1786, 160 cited in Ward, ‘The Criminal Corpse, Anatomists, and the Criminal Law’, p. 81.

<sup>825</sup> For a detailed assessment of the provisions for pauper burial and the importance of a decent burial in working class culture see, E. Hurren & S. King, ‘Begging for a Burial’: Form, Function and Conflict in Nineteenth-Century Pauper Burial’ *Social History*, 30 (3) (2005); T. Laqueur, ‘Bodies, death and pauper funerals’, *Representations* I (1983), pp. 109-31; J. M. Strange, “‘She cried a very little’: death, grief and mourning in working-class culture c. 1880-1914’, *Social History*, XXVII, 2 (May 2002) pp.

the burial of the body in death and respectable funerary as demonstrating 'at one and the same time wealth and.....distance from the workhouse.'<sup>826</sup> In essence, a decent burial was to be attained at all costs, a task easier said than done. The parlous state of burial grounds was much attested to in the decades preceding the Anatomy Act. Perhaps worst of all was the state of Ballast Hills, a longstanding Dissenters Burial Ground in the Ouseburn to the East of Newcastle. Established as a cemetery for non-conformists it was also popular with the region's poor owing to the comparatively minor burial fee of sixpence. Despite its diminutive size, it soon became one of the largest Dissenters' burial grounds outside of London.<sup>827</sup> In 1824, 805 of the 1454 burials that took place in Newcastle were at Ballast Hills. In this sense 'over half the citizens of Newcastle were....denied 'the civil advantages of burial' afforded to Anglicans.'<sup>828</sup> By 1825 it was completely over-run and a new cemetery was sought out.<sup>829</sup> A member of the Dissenter community, who had been privy to initial meetings to establish a new site, burnished the *Newcastle Courant* with the figures for recent internments at Ballast hills. The letter's author opined that they had buried more people than in all the other churchyards in Newcastle combined, 'Ballast Hills have received, in only six years, above three thousand six hundred bodies! Where, without disturbing these, can room be found for another six years?'<sup>830</sup>

No doubt owing to this enormous overcrowding, the smell emanating from the site was noted by local Surgeon's Apprentice, Thomas Giordani Wright, in his diary of the time, 'your every faculty is put in instant requisition.... your nose is assailed by a

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143-161 & 'Only a pauper who no-one owns: reassessing the pauper grave, c. 1880-1914', *Past and Present*, CLXXXIX (2013), pp. 148-178.

<sup>826</sup> Richardson, *Death, Dissection and the Destitute*, p. 273. Richardson detailed the efforts communities would go to to avoid someone suffering this ignominy, most notably the establishment of burial societies which she saw as testament to the 'intensity of working class feeling on the subject of decent burial', p. 277.

<sup>827</sup> A. Morgan, *Beyond the Grave: An Exploration of Newcastle's Churches, Churchyards, Cemeteries and Burial Grounds* (Newcastle: Tyne Bridge Publishing, 2004), p. 129; Records of Ballast Hills Burial Ground are available at TWAM CE.BA.

<sup>828</sup> S. King, 'A Cemetery for Newcastle's Dissenters', *Journal of the North East Labour History Society*, 44 (2013) p. 77.

<sup>829</sup> "Outline of a Plan for a New Burial Ground at Newcastle", to raise a public subscription of £2,000, in £10 shares, with which to purchase land 'on the west or north west side of Newcastle', 13 September 1825. TWAM CE.BA/32. The land eventually purchased was on the west side of Newcastle at a place called Westgate Hill. The cemetery eventually opened on the 18<sup>th</sup> October, 1829.

<sup>830</sup> *Newcastle Courant*, 12th March, 1825.

combination of all the odours that render smell disagreeable and till your tastes shares the sensation.<sup>831</sup> The densely packed nature of the bodies coupled with relatively shallow burials, owing to vastly overpopulated spaces and a fear of digging out an existing grave, were an affront to human decency.<sup>832</sup> Indeed, at his sermon for the first interment of the replacement to Ballast Hills, Westgate Hill Cemetery, the Reverend Pengilly claimed that,

‘Everyone who has paid any considerable attention to the former places of interment, whether in reference to the church yards or the burial place at the Ballast Hills, must know, that except in the very small recent enlargements, the portions of the ground so appropriated have been literally crowded with the dead...I have known what it is to witness the bones of a friend...tossed up to the surface to make room for another.’<sup>833</sup>

Some churchyards were little better. Margaret Dobson, daughter of renowned local architect John, recorded that as late as the mid nineteenth century their appearance, in the region, ‘could not have failed to have been a source of infinite pain to their living friends.’<sup>834</sup> The relatively open nature of these resting places for the region’s dead made them rich pickings for many a grave robber. Writing in 1823, one correspondent to the *Newcastle Magazine*, on the subject of body-snatching noted that

‘there is a deep and sanctifying awe connected with the stillness of the grave, which we will hesitate whether to call superstition or religion. Nothing can be better calculated to

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<sup>831</sup> Wright noted that the burial ground was just one in a long list of things in the Ouseburn that added to the ‘delectable perfume.’ Amongst other things there was a steam mill, iron foundry, lime kilns and a tripe shop with a ‘general receptacle for manure at the rear.’ Johnson, *The Diary of Thomas Giordani Wright*, p. 78.

<sup>832</sup> An undated order detailing that burials be no less than ‘four feet in depth’ survives in records of the cemetery although it is clear from the sermon of Reverend Pengilly and contemporaneous sources that this had previously not been adhered to. Order that all burials ‘be in graves of not less than four feet in depth (n.d.), TWAM CE.BA/23

<sup>833</sup> *Newcastle Courant*, 24th October, 1829.

<sup>834</sup> M. Dobson, *Memoir of John Dobson...Member of the Royal Institute of British Architects...A List of his Works*, Internet Archive. Accessed 30 April 2017, <https://archive.org/details/memoirjohndobso00dobsgoog>. In her memoir Margaret, Dobson’s daughter, noted that the Burials Act which closed the churchyards, were a ‘boon to Newcastle.’ Dobson himself went on to build Jesmond Cemetery, which stands to this day directly opposite All Saints Cemetery built in 1857. The contrast between the two was noted by Alan Morgan as testament to the decreasing fear of grave robbery, Dobson’s cemetery enclosed by high stone walls whilst All Saints has far shorter cast iron railings. All Saints was also the final resting place of Newcastle’s executed criminals, when their bodies were reinterred during the demolition of Carliol Square Gaol in 1924. Morgan, *Beyond the Grave*, p 66.

refine and exalt the human mind than the fearful solemnity  
with which we view the unsouled ashes of a fellow man.'

The letter's author acknowledged the necessity of bodies for the region's surgeons, but lamented the fear created by body snatchers. He deemed the public horror at the denial of burial or disturbance of the grave so high that he thought it better for the 'operations in darkness and secrecy (sic)' of the body snatchers to continue over legalising the practice of handing non-criminal bodies over to surgeons, reasoning that,

'He that secretly commits a murder, though he deserves the utmost vengeance of mankind, may yet laugh at their retributive justice but the man who excarcerates the tenants of the grave in the absence of the discovery, inflicts no injury upon society, and consequently *ought* to be visited with no punishment.' <sup>835</sup>

This sort of tumult surrounding the safety of the body from surgeons was in line with wider practices acknowledged across the country.<sup>836</sup> Indeed, several surviving wills of the period testify to the widespread nature of this popular fear. One Steven Wright of Tynemouth left detailed instructions regarding his death and burial. Amongst these were the instructions that, 'my body be kept until every appearance of Life is gone...that my Body shall not be opened nor anything done by Surgeons'<sup>837</sup>

### **North-East execution burial sites**

In the seventeenth and eighteenth century at Newcastle, executed felons were usually buried on the unconsecrated north side of St Andrew's Church adjacent to the town gaol at Newgate, with Northumberland prisoners interred at nearby St John's.<sup>838</sup> Detailing the execution of James O Neil, on Newcastle's Town Moor, one

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<sup>835</sup> H S., 'On Body Stealing', *The Newcastle magazine*, 2 (6) (June, 1823), p.314. Numerous reports of Body Stealing survive in the records for Ballast Hills, amongst them, 'Stealing of bodies from Ballast Hills', November 1829. CE.BA/28/21

<sup>836</sup> P. Linebaugh, 'The Tyburn Riot Against the Surgeons', in *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London, 1976). For a detailed examination of how opprobrium towards body collectors at the gallows grew over time see K. Cregan, 'E. Ravenscroft's, "The Anatomist" and the "Tyburn Riots Against the Surgeons"', *Restoration: Studies in English Literary Culture, 1660-1700*, 31 (1) (Spring, 2008), pp. 19-35. Further proof of the riotous tendencies towards potential body-snatching can be seen in chapter five with the riots in the late eighteenth century in Berwick.

<sup>837</sup> Durham University Special Collections, Probate Records. DPRI/1/1834/W22/7. Image available online <http://familyrecords.dur.ac.uk/nei/images/DPRI-1-1834-W22-7r.jpg>

<sup>838</sup> Morgan, *Beyond the Grave*, p. 36, 79.

later history noted that the body was ‘conveyed by friends....to a public house near the gaol, where it was waked, and on the following day (Sunday) it was interred at St. Andrew’s Church; about thirty people following it to the grave.’<sup>839</sup> The burial of criminal bodies on the north side of church-yards was common practice in the period. It was also the occasional resting place for excommunicates, unbaptized infants and in some cases suicides. A practice that led many families by the late eighteenth century to view it as ‘polluted’, sometimes preferring to retrieve ancestors’ bones in order to bury them in the south side.<sup>840</sup> In her work on the archaeology of burials Tarlow asserted that, whilst never recognised legally, burial in less prestigious places was ‘part of the moral economy of the community’ until the twentieth century.<sup>841</sup> The locating of the criminal body in these metaphorical and literal liminal spaces marking the criminal as what Ward called ‘an outcast even in death.’<sup>842</sup> In these criminal spaces offenders were both symbolically and literally outside of the community. Just as the positioning of the gibbet, discussed in chapter five, played a central role in the punishment spectacle, so the burial positioning of the criminal body had a punitive symbolism that spread far beyond the grave. Of the vanishingly rare records of burial of capital felons in Durham it is notable that some prisoners may well have been buried near to the site of the scaffold. One report following the execution of John Carleton in 1802 recorded that ‘he was cut down and removed to the gallows’ field for interment; prior to which, his Mistress (Scott) very frugally stripped him to the shirt.’<sup>843</sup> Similarly in Morpeth, accounts survive of burial on ‘Goose Hill’, on the Southern bank of the river Wansbeck. One letter to nineteenth century historian John Hodgson noted this location as both the ‘place where malefactors were executed’ and the burial site of a Mrs Pye who ‘lived at the foot of the town’ and was ‘buried here for a witch.’<sup>844</sup>

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<sup>839</sup> M. A. Richardson, *The Local Historian’s Table Book: Of Remarkable Occurrences, Historical Facts, Traditions ... Connected with the Counties of Newcastle-upon-Tyne, Northumberland and Durham, Volumes 3-4*, p. 168.

<sup>840</sup> M. Williams, *Suicide and Attempted Suicide: Understanding the Cry of Pain* (London: Penguin, 2002), p.15.

<sup>841</sup> Tarlow, *The Golden and Ghoulish*, p. 10.

<sup>842</sup> Ward, ‘Introduction’ in *A Global History of Execution*, p. 13.

<sup>843</sup> *Hampshire Telegraph*, September 9<sup>th</sup>, 1802.

<sup>844</sup> The date is not provided, but Pye’s execution is recorded in another regional history as having taken place in 1658 and having been the consequence of ‘her ignorant neighbours charging her with the crime. Pye was the landlady of the Queen’s Head Inn in Morpeth. William Parson and William White (eds.) *History, Directory, and Gazetteer, of the Counties of Durham and Northumberland: And the Towns and Counties of Newcastle-upon-Tyne and Berwick-upon-Tweed. Together with Richmond, Yarn, and Detached Places Appertaining to the Bishopric and Palatinate of Durham*;

## Decreasing Visibility of the Coffin

In line with the decreasing visibility of the more elaborate ceremonial aspects of execution across the nineteenth century, as detailed in chapter two, so the apparatus of burial also became increasingly hidden in North East executions. Where once the convicts had been paraded through the centre of town, as was Jane Jamieson in 1829, on a 'cart....sitting above her coffin' increasingly the coffins were removed from sight.<sup>845</sup> Indeed, by the mid 1840s executions across the region were routinely undertaken on scaffolds that concealed the coffin from public view. At the 1844 execution of Mark Sherwood the coffin was placed out of public view behind the boards of the raised scaffold and Sherwood's body lowered down into the coffin after death. This tradition continued right up until the 1868 Act that moved executions out of public sight. Reports of the final public execution in Durham, that of Matthew Atkinson in 1865, noting the 'enclosure' of the scaffold inside which 'the men who take down the body', for preparation in the coffin, can be concealed.<sup>846</sup>

There are numerous possible reasons for this, not least the still redolent fear of recovery of the prisoner. As noted in chapter two, in the reasoning behind the location of Newcastle's Carlisle Street gaol recovery of prisoners was a very real fear. Testament to this can be seen in the numerous instances in the North East in which the coffin would take a separate route or even arrive on a separate day prior to the execution. At the 1809 execution of John Boyd in Morpeth, whilst the procession headed towards the site of execution at the foot of the town, one broadside noted that 'a cart, in which was the coffin.....went before and came by a different route to the gallows.'<sup>847</sup> As late as 1863, at what was to be the final public execution in Newcastle, reports from the prison, the night prior to the execution noted a dense crowd. There was 'a rush' occasioned by the 'arrival of the coffin' and the *Newcastle Journal* claimed that were it not for the police 'clearing the way' it would have been greatly delayed. Noting the arrival, shortly behind the coffin, of a small black foot

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*Including Copious Lists of the Seats of Nobility and Gentry, and a Variety of Commercial, Agricultural, & Statistical Information*, (Leeds: E. Baines & Sons, 1827), p. 421.

<sup>845</sup> *Newcastle Courant*, 14<sup>th</sup> March, 1829.

<sup>846</sup> *Newcastle Chronicle*, 18<sup>th</sup> March, 1865.

<sup>847</sup> *An account of the crime, trial and execution of John Boyd*.

stool believed to be for the condemned prisoner on the scaffold the newspaper remarked that 'it is impossible to describe the excitement of the crowd on the arrival of these articles.'<sup>848</sup>

In many instances friends or family of the condemned made provision at the execution for the swift recovery of the body from the scaffold. At the double executions of highwaymen John Wilkinson and William Hetherington, Morpeth 1821, 'The friends of each attended with vehicles' with which to take away 'the dead bodies after they were cut down.'<sup>849</sup> Whilst in one extraordinary incidence, at the 1819 execution of North Shields watchmaker Joseph Charlton at Morpeth, vast numbers attended his interment. Following execution his body was followed by great numbers to its eventual place of interment in Tynemouth where reports noted 'Upwards of 2000' in attendance.<sup>850</sup> The procession from Morpeth to Tynemouth (some seventeen miles) was met by an estimated 1,000 people at nearby Earsdon, some four miles north from the eventual resting site, and by the time of the body's arrival at the grave at 8.30pm, numbers were estimated at 2,000. The numbers in attendance for Charlton's interment were remarkable given the general sentiment towards the 'unnatural crime' of sodomy in the period.<sup>851</sup> Reporting on the execution one newspaper noted how 'the extreme indelicacy of the trial totally prevents any detail.' The attendance had been great at the trial too, numerous reports noting the 'greatly crowded courtroom, a mammoth affair at the Guildhall that lasted 13 and a half hours.' One possible reason may be found in the description of his 'decent honest family' and his own reputation of being a man of 'very good character, sober and

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<sup>848</sup> *Newcastle Journal*, 16<sup>th</sup> March, 1863.

<sup>849</sup> *An Account of the Trial, Crimes and Execution of Wilkinson and Hetherington*.

<sup>850</sup> *Carlisle Patriot*, 24<sup>th</sup> April, 1819.

<sup>851</sup> The term 'Unnatural offences' covered a number of crimes, most notably sodomy, indecent assault and indecent exposure. For a detailed history of the treatment of 'unnatural crimes' and more particularly sodomy see Matt Cock (et al.), *A Gay History of Britain: Love and Sex Between Men Since the Middle Ages* (Greenwood World Pub, 2007); For an assessment of the treatment of the crime in the eighteenth and nineteenth century see P. Bartlett, 'Sodomites in the Pillory in Eighteenth-Century London' 6 (4) (December, 1997), pp. 553-572; J. Greene, 'Public Secrets: Sodomy and the Pillory in the Eighteenth Century and Beyond' *The Eighteenth Century*, 44 (2/3) (2003), pp. 203-232; R. Shoemaker, 'Streets of Shame? The Crowd and Public Punishments in London, 1700-1820' in S. Devereaux & P. Griffiths (eds.), *Penal Practice and Culture, 1500-1900* (Basingstoke: Palgrave Macmillan, 2004), pp. 232-257. For its treatment in the North East see Rushton & Morgan, *Rogues, Thieves*, pp. 97-123.



industrious, and respectable in demeanour.<sup>852</sup> Testament to the extraordinary nature of Charlton's interment, given the nature of the crime, is made fully apparent when compared with the first case of burial behind the prison wall in the North East.

### **Burial behind the prison wall**

Owing to the intentionally clandestine nature of burial behind the prison wall, little is widely known of the arrangements, save for what the local newspapers reported. In the eighteenth century, where reports of the execution itself often barely strayed past a cursory two lines, the details of burial arrangements of the executed were very rarely reported. Even into the early nineteenth century the detail provided tended to be vague and limited at best. However, one of the anomalies of the 1868 Capital Punishment Act was that, in one sense, a new access was given to the criminal body after death, through the inquest. Although later limited in their access to the execution itself, press access was permitted at the inquests which allowed them to view the body of the condemned, more often than not in its coffin awaiting burial. As a result, although not effusive, reports of the presentation of the body, coffin and location of burial became more commonplace and detailed post 1868. Similarly, surviving records from the demolition of Newcastle's Carlisle Street Gaol give us a unique and clear insight into the eventual resting place of the capitally condemned there and the preparations made for the burial.<sup>853</sup>

The preparation, clothing, religious rites, location and orientation of the final resting place mattered greatly and indeed can still, even to this day, be the cause of significant anger and consternation.<sup>854</sup> In almost all cases of prison burials in the region there was consistency in the apparatus of burial, the coffin itself was almost

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<sup>852</sup> *The Last Dying Words of Joseph Charlton*. Testament to the limited deterrent effect of such an event was detailed in the *Newcastle Courant* who noted that two people were arrested for pick pocketing during the proceedings. *Newcastle Courant*, April 3rd, 1819.

<sup>853</sup> The records produced were in response to Prison Commission Circular 1027. The circular detailed the decision of the Commissioners that the 'graves of persons who have been executed in prisons shall no longer be distinguished by names, initials or any other marks on the walls.' As such the Circular noted that 'before this can be done it is necessary to prepare records of existing graves.' Both Durham and Newcastle took part in the exercise, however the evidence for Durham only details burial locations from after the period of focus. Morpeth Prison had long since fallen into disuse. Prison Commission Circular No. 1027, 29<sup>th</sup> December, 1922. TNA PCOM 8/222. The resultant records of prisons burial that undertook the survey are located in TNA HO 324/1 and HO 324/2.

<sup>854</sup> 'Bodies buried "wrong way" at Aberystwyth cemetery', 23<sup>rd</sup> February, 2012. Accessed 11<sup>th</sup> July 2018 <https://www.bbc.com/news/uk-wales-mid-wales-17140489>

always reported as being 'plain' or 'common deal'<sup>855</sup> and always painted black, the colouring in line with the sombre palette applied to the scaffold enclosures in the region in this period. In one instance, at the execution of George Hunter, the final private execution in Morpeth, one newspaper reported that the coffin even had a 'breastplate' with the following details, "George Hunter, Died March 28<sup>th</sup>, 1876, Aged 23 years.'<sup>856</sup> However, whilst there was consistency in the physical preparations of death, it would appear that there was little consistency across the region in this period as to where and how the bodies were eventually located.

## Durham

The first reported instance of burial within the prison grounds in the North East took place at Durham, that of 67-year-old George Atcheson in 1819. Accounts from his execution noted that, after hanging the customary hour, his body was 'cut down and interred in the burying ground on the back of the prison' or 'taken down for interment behind the New Courts.'<sup>857</sup> What is of particular interest here is that Atcheson's crime was not murder. It would seem that, despite being survived by a widow and ten children his burial arrangements were as a result of his body 'not being claimed by his friends.'<sup>858</sup> Closer attention to the case may elicit why. Atcheson's offence was the rape of one Isabella Ramshaw, a child of 'under 10 years of age.'<sup>859</sup> By 1819, and given the circumstances of the victim, it is undoubted that the crime would have caused deep social upset.<sup>860</sup> Testament to the strength of feelings surrounding the case can be seen in the summations of the judge, who stated that 'a more melancholy case never came within his knowledge.'<sup>861</sup> It would appear from further

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<sup>855</sup> 'Execution of Hayes and Slane', *Northern Echo*, 14<sup>th</sup> January, 1873.

<sup>856</sup> *Morpeth Herald*, 1<sup>st</sup> April, 1876.

<sup>857</sup> *The Northumberland and Newcastle Monthly Magazine for the Year 1819* Vol II (Newcastle: J. Clark, 1819). p.129; *The Last Dying Words or Confession of George Atcheson* (Durham: Brockett, n.d.), JJC Crime 1 (12).

<sup>858</sup> 'not being claimed by his friends, it was interred in a piece of ground reserved for that purpose to the westward and immediately adjoining the new prison.' *Durham County Advertiser*, 17<sup>th</sup> April, 1819.

<sup>859</sup> *The Last Dying Words or Confession of George Atcheson*

<sup>860</sup> Rape had an interesting history in the criminal law, not least because of the difficulty of successfully prosecuting it. Beattie, *Crime and the Courts*, p.125. Whilst some have suggested that rape was not a 'serious social problem' in the c17th and early eighteenth century, certain types of cases always received additional anger and punishment. In particular the rape of a child, where even in cases of attempted rape the additional punishment of the pillory was added to the usual fine. A. E. Simpson, 'Popular Perceptions of Rape as a Capital Crime in Eighteenth-Century England', *Law and History Review*, 22 (1) (Spring, 2004), pp. 32-33.

<sup>861</sup> *The Last Dying Words and Confession of George Atcheson*

comments made by the judge that Atcheson in assaulting Ramshaw may well have been looking for a famed 'virgin cure', more readily acknowledge in studies of Medieval England.<sup>862</sup> Whatever the motivation for the appalling crime, the particularly shocking nature of it appears to have left Atcheson with no-one willing to save him from post-mortem disgrace. In the reports detailing his crime and execution, many remarks were made as to Atcheson's limited education and the confused nature of his thoughts, but in detailing his last few days on earth one broadside noted that in one respect his thoughts were clear and that was in his 'unceasing' 'anxiety for the preservation of his soul.'<sup>863</sup> His anxieties may well have been exacerbated by the knowledge that no-one would lay claim to him after death.<sup>864</sup>

Following Atcheson's burial at Durham almost all references made to further burials at the prison indicate the final resting place as being in the 'Western' part of the gaol or, as in the case of Thomas Smith and Milner Lockey in 1860, the 'yard behind the west wing of the prison.'<sup>865</sup> On numerous executions mention is made that graves were dug prior to execution and boards were used to cover them for fear of upsetting the prisoners proceeding past them to the scaffold.<sup>866</sup> Indeed, at the 1876 execution of John Williams, one newspaper detailed how the proximity of his condemned cell to the site of the grave meant that efforts had been made to 'partly board' his window to 'prevent the culprit observing during life the grave which was to receive his body after death.'<sup>867</sup> The only apparent difference in provision for burial appears to be in the burial location of women's bodies. Following the execution of Mary Ann Cotton the *Shields Daily Gazette* carried a detailed description of her final resting place. Initially it stated that the 'place of sepulture was the same as in the case for the last

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<sup>862</sup> The 'Virgin Cure' was a 'widespread myth' more commonly associated with the Medieval period, namely that 'sexual relations with a virgin would cure an infected man of venereal disease'. Michelle M. Sauer, *Gender in Medieval Culture* (Bloomsbury Publishing, 2015), p. 40. One Broadside relating to Atcheson's execution noted that the Judge had put paid to the 'received opinion of the lower classes' that a 'person so afflicted would find relief with having communication with a young and healthful woman.' *The Last Dying Words and Confession of George Atcheson*.

<sup>863</sup> *The Last Dying Words and Confession of George Atcheson*.

<sup>864</sup> The same fate awaited Robert Peat, executed at Durham in 1822. Reports noted that 'none of his relatives attended the execution or applied for the body afterwards' As such provision was made for his interment in the 'burying ground adjoining the county gaol.' *Durham County Advertiser* 17<sup>th</sup> August, 1822.

<sup>865</sup> *Newcastle Journal*, 29<sup>th</sup> December, 1860.

<sup>866</sup> *Newcastle Courant*, 20<sup>th</sup> March, 1863.

<sup>867</sup> *Newcastle Courant* 28<sup>th</sup> July, 1876.

four criminals', noting its proximity to the graves of Hayes and Slane.<sup>868</sup> However, it went on to state that she was buried around 'ten feet further across the yard' than them. This same distance was maintained for Elizabeth Pearson two years later. Despite being hanged alongside William McHugh and Michael Gilligan, her body was buried separately 'to the right of the grave of Mary Ann Cotton.'<sup>869</sup> This was a marked difference to the arrangements in the other triple execution in this period at Durham in which 'a large cavity capable of accommodating the three coffins abreast' was the final resting place for the culprits.<sup>870</sup>

## Morpeth

The first instance of prison burial at Morpeth was undertaken in 1848 following the execution of Ralph Joicey, the parricide. Condemning him to death, Mr. Justice Coleridge concluded his sentence 'after death, your body to be buried within the precincts of the prison to which you will now be taken.'<sup>871</sup> Although most reports of his send-off made little or, in the case of *The Times*, no mention of the burial procedures two Newcastle papers noted Joicey's eventual resting place as a 'grave beneath the debtor's ward' another concurred with this noting that Joicey was 'interred under the debtor's prison in the east wing of the gaol'.<sup>872</sup> At the second instance of prison burial, the double execution of George Matthews and James Welch in 1847, little detail is provided on burial however It would appear that neither left behind immediate family who might have laid claim to them anyway, had they been allowed to. One paper noted that Matthews, a native of Ireland, had no relations in this country 'nor did he correspond with any he may have had at home.' Similarly, Welch had attempted to contact his father wishing to see him. He resided

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<sup>868</sup> Slane and Hays had been executed two months prior, on 13<sup>th</sup> January, 1873.

<sup>869</sup> *Newcastle Courant* 6<sup>th</sup> August, 1875. The same paper noted that Gilligan and McHugh were buried 'alongside Daley' (Hugh Daley executed 1874) and 'near to Dawson' (Charles, Dawson, William McHugh and Edward McGough executed 1874).

<sup>870</sup> *Newcastle Courant*, 9<sup>th</sup> January, 1874. The aforementioned Home Office burial files (HO324/1 and HO 324/2) include a map of burials at Durham Prison but when referenced against the register of burials it is clear that the earliest grave marked on the map is that of William Waddell in 1888. By the time of the plan graves are located at numerous sites across the prison, the only consistency being their proximity to the boundary walls. Testament to the lack of records in these earlier cases can be seen as graves 2-4 (John William Johnson 1891, Charles Smith 1898, John Bowes 1990) carry the accompanying note 'No record, but believed to be here.' 'Durham Prison Burial Ground' 14<sup>th</sup>, December, 1922. HO342/2

<sup>871</sup> *Newcastle Courant*, 6<sup>th</sup> March, 1848.

<sup>872</sup> *Newcastle Journal*, 21<sup>st</sup> March, 1846; *Newcastle Guardian and Tyne Mercury*, 21<sup>st</sup> March, 1846.

with Welch's mother at nearby Fourstones in Northumberland, but his request was 'very naturally' declined. Following their execution both men were 'coffined and interred within the precincts of the gaol.'<sup>873</sup> In the last two instances of prison burial in Morpeth, both undertaken following the 1868 Capital Punishment Amendment Act, more detail is given in the burial provision. Reporting on Richard Charlton's execution in 1875, one paper noted that his body was buried in 'the north-east corner of the prison immediately 'adjoining the lower part of the Goose Hill,'<sup>874</sup> see illustration 15. Similar reports occurred for the final execution in the region, the following year, with George Hunter's body being reported as buried on the 'North East side of the prison.'<sup>875</sup> Reports of these later executions noted the proximity of the buried bodies in the prison grounds. Reporting on Richard Carlton's burial in 1875, the *Newcastle Courant* noted it as being 'dug close to the place where Joicey...was buried in March, 1846'<sup>876</sup> Similarly, reports of George Hunter's grave in 1876 noted that it had been placed 'end to end' with Charlton's.<sup>877</sup> Testament to how close the graves were can be seen in another report in which it was recorded that in digging Charlton's grave, the 'exact positions of the other three graves were ascertained.' Perhaps owing to this potential uncovering, the newspaper noted that The Governor 'has resolved to mark each of the four with small tomb stones.'<sup>878</sup>

## Newcastle

At Newcastle, in the first instance of prison burial there, Mark Sherwood was laid to rest 'in the garden of the gaol' which one paper noted was 'within a few feet of the Western wall, which runs from the corner opposite the George IV public house to the railway station.'<sup>879</sup> At Patrick Forbes' burial in 1850, reports noted that he was buried 'about 10 yards' from Sherwood along the 'Southern Boundary Wall'. It was also

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<sup>873</sup> *The Newcastle Guardian*, 20<sup>th</sup> March, 1847.

<sup>874</sup> *Newcastle Courant*, 24<sup>th</sup> December, 1875. Goose Hill may well have been one of the vantage points mentioned at Richard Charlton's funeral in 1875 from which local youths had tried to see the execution over the prison wall. 'Some youths made their way up a plantation situate a little above the gaol, and passed from thence upon a hill on the other side, whence some alleged they could see the top of the scaffold; but a policeman saw them and soon dislodged them from their "coign of vantage". *Morpeth Herald*, 25<sup>th</sup> December, 1875.

<sup>875</sup> *Morpeth Herald*, 1<sup>st</sup> April 1876

<sup>876</sup> *Newcastle Courant* 24<sup>th</sup> December 1875.

<sup>877</sup> *Morpeth Herald*, 1<sup>st</sup> April 1876.

<sup>878</sup> *Newcastle Daily Chronicle*, 24<sup>th</sup> December 1875.

<sup>879</sup> *Newcastle Journal*, 24<sup>th</sup> August, 1844.

noted that the position of both graves was 'indicated by a square flag placed on top.'<sup>880</sup> The reports appear in contradiction to a later prison burial plan, provided by Newcastle Prison to the Home Office in 1922, see illustration 16. The plans mark Mark Sherwood's (1844) and Patrick Forbes (1850), numbers 12 and 13 respectively, as next to each other on the Western Boundary Wall.<sup>881</sup> At the last public execution in Newcastle, that of George Vass, reports said that his body was 'buried...near the southern boundary wall of the gaol.' The newspaper noted the morbid detail that on his route to the scaffold 'the poor creature (Vass) unwittingly trod over the very spot of earth where a few hours later his mortal remains were laid forever.'<sup>882</sup> This would appear to tally with the 1922 map which marks his grave, number 3, as on the meeting point of the Eastern and Southern Boundary Wall.<sup>883</sup> The only instance at Newcastle with an explicit mention of the orientation of the bodies in the ground appears in a report on the execution of Patrick Forbes in 1850. It notes that both his and Mark Sherwood's feet were facing 'toward the south.'<sup>884</sup>

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<sup>880</sup> These may well have been the type of markers that the aforementioned Circular sought to destroy. Such marks were deemed 'undesirable as they perpetuate the memory of the crime, cause unnecessary pain to the relatives and rouse a morbid interest in prisoners.' PCOM 8/222 HO Circular No. 1027, 29<sup>th</sup> December 1922.

<sup>881</sup> HO 324/2

<sup>882</sup> *Newcastle Courant*, 20<sup>th</sup> March, 1863.

<sup>883</sup> Vass' grave is relatively isolated. The majority of later graves appearing directly opposite his on the Western Wall, the nearest of which was c.88 feet away from those of Sherwood and Forbes. Newcastle Prison Burial Ground HO 324/2.

<sup>884</sup> *Newcastle Journal*, 31<sup>st</sup> August, 1850. Whilst the newspaper does not comment any further on this point it is worthy of mention that the implication of the positioning of the body in the grave had a deep rooted history. Richardson notes customs such as orientating the body towards the East had 'very long roots' and can even be observed in former colonial 'cultural backwater' areas. Richardson, *Death, Dissection and the Destitute*, p. 6; Richardson was citing the work of Barrick in Cumberland, Pennsylvania Barrick, M. E, 'Cumberland County Death Lore' *Pennsylvania Folk Life* 38 (4) 1979. Studies of Early Modern England have also identified the predominant practice in Christian burial of burying the body with the 'head to the west and the feet to the east' noting particularly its absence in 'execution cemeteries'. A. Mattison, 'The Execution and Burial of Criminals in Early Medieval England, c. 850-1150; An examination of changes in judicial punishment across the Norman Conquest', PhD Thesis, University of Sheffield (2016), pp. 186-187 accessed 17<sup>th</sup> November, 2017 <http://etheses.whiterose.ac.uk/17173/>



Illustration 15: Morpeth Prison with 'Goose Hill' marked to its immediate North East. Taken from Woods, A Plan of the Town of Morpeth From an Actual Survey (1826). Image courtesy of Northumberland Record Office.



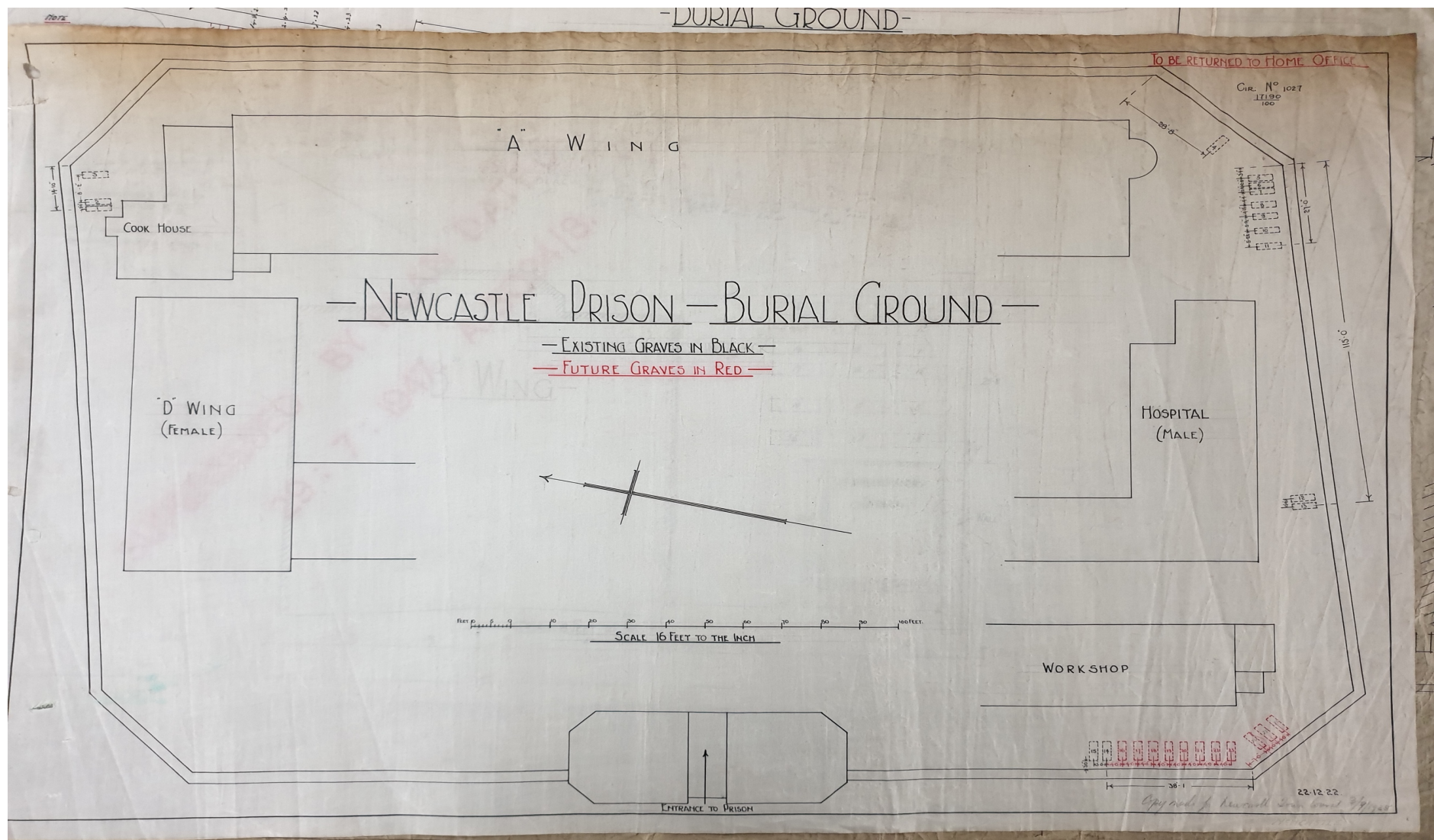


Illustration 16: Newcastle Prison Burial Ground, 22nd December 1922. TNA HO 324/2



## **The preparation of the body and scaffold and the divulging of wares.**

In much the same way that scholars of the scaffold have shown the sometimes-symbolic role clothing played on the scaffold so, after death, it could often attain the status of reliquary. Likewise, accoutrements of the scaffold and execution ephemera, from woodchips to nooses, had a long history of being imbued with religious and supernatural intrigue, a certain macabre lustre and in some cases criminal celebrity.<sup>885</sup> The division of clothing after death then often became a divisive issue and practices for its provision in the coffin changed over time and differed regionally. At the execution of James O' Neil on Newcastle's Town Moor in 1816, O'Neil was attended by his brothers in the cart all the way to the scaffold and left them each with an item of his clothing, giving 'to one of them he gave the handkerchief which was taken from his neck, and to the other his watch.'<sup>886</sup> At the execution of Jane Jameson reports noted that a green shawl covering her shoulders was 'laid aside' at the place of execution.<sup>887</sup> In 1844 at the execution of Mark Sherwood in Newcastle his body was placed directly in the coffin, wearing the clothes he had been hanged in, but on arrival at the gaol his body was removed from the coffin, 'disrobed' and then 'replaced' immediately prior to burial. The removal of the clothes in certain instances could have been perceived as a disgrace, but reports of the time note that, it had been according to his wishes that his clothes were 'divided amongst his friends'.<sup>888</sup>

In certain instances, officials in the regions made concerted efforts to avoid any attempts to take or profit from the ephemera of execution. At the 1859 send-off of John Shafto Wilthew at Durham, Under-Sheriff, W.E. Wooler Esq went to

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<sup>885</sup> O. Davies & F. Matteoni, "A Virtue beyond All Medicine", pp. 686–705; R. Penfold-Mounce, 'Consuming Criminal Corpses: Fascination with the Dead Criminal Body', *Mortality*, 15, (3) (August, 2010): pp. 250-265; S. McCorrstine, *William Corder and the Red Barn Murder: Journeys of the Criminal Body* (Palgrave Macmillan, 2014) & 'The Dark Value of Criminal Bodies: Context, Consent, and the Disturbing Sale of John Parker's Skull', *Journal of Conservation and Museum Studies* 13 (1) (February, 2015).

<sup>886</sup> *A True and Particular Account of the Trial and Execution of James O'Neil.*

<sup>887</sup> *An Account of the Trial and Execution of Jane Jameson, who was Hanged on Newcastle Town Moor, March 7th, 1829, for the Murder of her Mother* (Newcastle: J. Marshall, c.1829), Bodleian Library, University of Oxford: John Johnson Collection: Harding B 9/2 (74)

<sup>888</sup> *Newcastle Journal*, 24<sup>th</sup> August, 1844.

extraordinary lengths to avoid the dissemination of these articles; ordering the rope and clothes to be burnt or destroyed, unless claimed by the family. The newspaper reporting this decision noted the practice 'since time immemorial' for the hangman to 'claim the clothes of the culprit and the rope...as his pre requisites' but praised the 'very proper' actions of the Under-Sheriff.<sup>889</sup> Similarly at the execution of Smith and Lockety in Durham in 1860, reports noted that the men were placed in their coffins in 'the clothes in which they were hanged' and with the 'ropes still round their necks.' The Under-Sheriff was commended for the latter arguing that it prevented the sale of 'relics' that is 'too frequently the case.'<sup>890</sup> There were numerous instances of the practice of retaining or selling the rope in the region, particularly during executions undertaken by William Marwood or William Calcraft. Marwood was variously reported at executions in which he officiated as spending many a good hour in the Dun Cow Inn, a short walk from Durham Prison, where he would regale fellow drinkers with stories of executions past and trinkets therefrom.<sup>891</sup>

The exact legal requirements of the disposal of the rope and the body were often unknown by those officials in attendance and could be the source of controversy. At the execution of Mary Ann Cotton in 1873, the issue was brought up by one of the jurymen at the Coroner's Inquest on her body. On seeing Cotton laying in her coffin, jurymen and local joiner, Mr Sewell, remarked on the fact that 'there was no rope.' Sewell, fearing its removal for sale, thought it 'ought not to be made a show of' and that the law provided for it to be placed in the coffin. The Coroner sternly rebuked Sewell saying he himself had nothing to do with the rope and 'neither had Mr Sewell.' Upon further questioning Prison Governor Young confirmed that the executioner, William Calcraft, had taken it with him, an act that Prison Warder Appleton thought Calcraft was 'entitled' to do. Interestingly, in repeatedly making the case for the containment of the rope within the coffin, Sewell noted his long experience of executions in Durham and stated that the practice had always been observed, adding that he could remember it being done 'as far back as Wilthew.'<sup>892</sup>

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<sup>889</sup> *Durham County Advertiser*, 12<sup>th</sup> August, 1859. The actions of the Under-Sheriff were fortuitous as Wilthew's spectacularly botched hanging led to questions in parliament about the case and would have undoubtedly added a dark glamour to any possession preened from the punishment spectacle.

<sup>890</sup> *Newcastle Journal*, 29<sup>th</sup> December, 1860.

<sup>891</sup> *Newcastle Courant*, 1<sup>st</sup> January, 1875.

<sup>892</sup> *Shields Daily Gazette*, 25<sup>th</sup> March, 1873. Later studies of the Mary Ann Cotton case have numerous debated where the rope ended up. Some have argued it was given to Calcraft's assistant,

It would appear that in certain cases more attention was paid to the presentation of the body than in others. At the inquest over Hugh Daley's body, in 1874, reporters noted that his 'old boots were dirty and unlaced' believing that he must have been 'hurriedly shoved into them.' Similarly, his face was 'disfigured by blood which oozed from his nose and mouth.'<sup>893</sup> Various newspapers in the days following reported that information had spread about the state of Hugh Daley's body and led to much speculation as to his treatment. On some occasions the tops of the heads of the condemned were covered with the caps that had been afforded them on the scaffold; as was the case with Gilligan, McHugh and Pearson. In that case it would also appear that the body of Pearson, the only female of the three, was treated with more care. The *Shields Daily Gazette* noted her appearance as the 'best of the three' going on to detail that her black shawl and bonnet, neither of which had appeared at the scaffold, had been delicately placed on her chest.<sup>894</sup>

## Burial Service

In much the same way that decisions over clothing provision appear to have changed over time, so the reading of the burial service was not always undertaken. Strange has convincingly argued that the religious component of the funeral in this period was as much a 'secular right' as a religious 'rite' and as such its refusal in certain cases would have been read as a 'denial of dignity and respect'.<sup>895</sup> As was stated of Sherwood's execution in 1844, of his two requests only the provision of a deep grave was given, the burial service being denied to him. However, in most instances provision was made for the burial service to be read, with special attention to religious dispositions. At the triple execution of Dawson, Thompson and Gough in 1874, the Prison Chaplain performed the burial rites of the bodies of Dawson and

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Robert Evans, who was reported to have a collection in his living room. M.Connolly, *Mary Ann Cotton - Dark Angel: Britain's First Female Serial Killer*, (South Yorkshire: Pen & Sword, 2016), p. 164. Whilst others have surmised that it was initially sold to a collector for Madame Tussauds and later on to a private collector. I.S. Herdman, 'Mary Ann Cotton 1832-1873'. Accessed 17<sup>th</sup> April 2018 <http://www.maryanncotton.co.uk/ExecutionPage6.html>

<sup>893</sup> *Sunderland Daily Echo*, 28<sup>th</sup> Dec, 1874.

<sup>894</sup> *Shields Daily Gazette*, 3rd August, 1875.

<sup>895</sup> Julie-Marie Strange, *Death, Grief and Poverty in Britain, 1870-1914* (Cambridge University Press, 2005), p. 107.

Thompson whilst Canon Consitt read the Catholic rites over the body of Gough.<sup>896</sup> At the first private execution at Durham, John Dolan and John McConville 1869, provisions appeared the same, newspapers detailing that

‘A short religious service having been said by the Rev. Canon Consitt, the bodies were taken to the west yard; and there they were interred within the clothes which they were executed, and in precisely the same condition as when they were cut down from the gallows; and in a short time they were left in the silence and solitude of their unhonoured graves.’<sup>897</sup>

In most instances the burial service was read over the body after execution, but not always. At the execution of John Williams in 1876 the burial service was read during the procession ‘on the way to the scaffold.’<sup>898</sup> In certain instances the priest or attendant chaplain took action earlier, as in the case of John King, where his deeply disturbed manner (including biting an official who had pinioned him) induced the chaplain to read him the service in the Grand Jury Room, before procession to the scaffold; an action which was reported to have calmed him.<sup>899</sup> In numerous instances prisoners are recorded as being involved in a processional element for the burial as at the interment of John Shafto Wilthew in 1859 at Durham, where it was noted that ‘the whole of the prisoners attended the chapel at the funeral...and about thirty of them followed the remains to the grave.’<sup>900</sup>

### **Lime Burial: Destruction of the criminal body.**

The Warders strutted up and down,  
And kept their herd of brutes,  
Their uniforms were spick and span,  
And they wore their Sunday suits,  
But we knew the work they had been at  
By the quicklime on their boots.<sup>901</sup>

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<sup>896</sup> *Newcastle Courant*, 9<sup>th</sup> January 1874 p.2

<sup>897</sup> *Newcastle Courant* 26<sup>th</sup> March, 1869.

<sup>898</sup> *Northern Echo*, 27<sup>th</sup> July 1876 p.4

<sup>899</sup> *Durham County Advertiser*, 21<sup>st</sup> August, 1819.

<sup>900</sup> *Durham County Advertiser* 12<sup>th</sup> August, 1859.

<sup>901</sup> O. Wilde, ‘The Ballad of Reading Gaol’ (1896), Project Gutenberg. Accessed online 7<sup>th</sup> December, 2018 <http://www.gutenberg.org/files/301/301-h/301-h.htm>. Wilde’s poem detailed the crime, execution and burial of Charles Thomas Woolridge in 1896 for a detailed assessment of the truths and ‘untrue statements’ in his artistic work, surrounding the case see P. Robinson, ‘Sex, Lies, and Poetry: The

Detailing the effect of burial policies on executed criminals in the nineteenth century, Gatrell noted two things 'struck at them deliberately' namely their 'consignment to unconsecrated and quicklimed graves in prisons.'<sup>902</sup> The detrimental effect of this measure can be seen in later provisions made for burial to tackle cholera in the nineteenth century. During the 1848-49 cholera epidemic the General Board of Health dictated that 'all churchyards in the capital' be covered to a 'depth of three inches with quicklime'.<sup>903</sup> Of measures such as these Richardson noted the 'strong opposition' amongst the public owing to its 'unseemly' association with the burial of executed criminals.<sup>904</sup>

Testament to its wider social standing as a despised practice can be seen at the 1823 burial of suicide Abel Griffiths. Great consternation arose around the public nature of the ceremony itself but reports on the extraordinary burial noted, with relief, that 'the disgusting part of the ceremony of throwing lime over the body, and driving a stake through it, was dispensed with.'<sup>905</sup> Burial with quicklime had a long history and instances of a widespread dislike towards the practice can be seen across Europe, most notably in eighteenth-century Austria. Austrian burial regulations in this period were predicated on Emperor Joseph II's dislike of the irrational pomp of the traditional ceremony, his solution was a 'product of Josephinian utilitarianism.'<sup>906</sup> On 23<sup>rd</sup> August 1784, he issued a decree in which there were a few controversial clauses, he was soon forced to redact them following public outrage. Amongst the contentious clauses were the following,

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Ballad of Reading Gaol', *The Cambridge Quarterly*, 44 (4) (December 2015), pp. 299–320. Robinson acknowledges the validity of Wilde's assertion that 'interred in quicklime within the walls of the prison.'

<sup>902</sup> Gatrell, *The Hanging Tree*, p. 87.

<sup>903</sup> J. Rugg, *Churchyard and Cemetery: Tradition and Modernity in Rural North Yorkshire* (Oxford: Oxford University Press, 2015), p. 44.

<sup>904</sup> Richardson, *Death, Dissection and the Destitute*, p. 227.

<sup>905</sup> E. Burke, *The Annual Register or a view of the History, Politics and Literature of the Year 1823* (London: Baldwin, Craddock & Joy, 1824), p. 82. Burke gave a very detailed account of the case and a particularly detailed summary of the treatment of the body. "It had on a winding-sheet, drawers, and stockings...the body was then wrapped in a large piece of Russian matting, tied round with some cord, and instantly dropped into a hole, which was about five feet in depth.' Shortly after the ceremony the Burial of Suicide Act 1823 (4 Geo. IV, c. 52) dictated that from henceforth the suicide was to be interred in a churchyard or public burial place.

<sup>906</sup> W Stafford, *The Mozart Myths: A Critical Reassessment* (Stanford: Stanford University Press, 1993), p. 51;

4. Since the burial can serve no other purpose than to further the quickest possible decomposition, which is prevented by nothing more than the burial of bodies in coffins: thus it is commanded that the bodies should be sewn into a linen bag, completely naked and without clothes, then put into a coffin and be transported to the graveyard.

5. ...The body should always be taken out of the coffin and put into the pit, as it is sewn in the bag, be covered with quicklime and immediately be covered with soil.

The resultant public protest filed in Vienna, forced the magistrates to remove paragraphs 4-6 of the regulation before it entered law and in a court decree Joseph II stated that,

‘Everybody is allowed to be buried in coffins. Because his Majesty has noticed that, owing to the salutary order to bury dead bodies without coffins in linen bags, sewed in completely naked and without clothes, many minds have been troubled.’<sup>907</sup>

The public indignation towards this sort of death practice in Austria was clear as it engendered as much anger as similar practices did in England. In all of these instances the purpose of quicklime was clear: it was an accelerant for decomposition of the body. Wilde’s ballad detailed this horror

‘all the while the burning lime,  
Eats flesh and bone away  
It eats the brittle bone by night,  
And the soft flesh by the day,  
It eats the flesh and bones by turns,  
But it eats the heart away.’<sup>908</sup>

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<sup>907</sup> J. Kropatschek, *Handbuch aller unter der Regierung des Kaisers Joseph des II. für die k.k. Erbländer ergangenen Verordnungen und Gesetze in einer systematischen Verbindung*, (Vienna: Johann Georg Moeßle, 1786) (VI), pp. 565-70. Accessed 7<sup>th</sup> July, 2018. <http://alex.onb.ac.at/cgi-content/alex?apm=0&aid=hvb&datum=1786>; Kropatschek, *Handbuch 1787*, (VIII), p. 675f. accessed 7<sup>th</sup> July 2018 <http://alex.onb.ac.at/cgi-content/alex?apm=0&aid=hvb&datum=1787> cited in Dr. M. Lorenz, ‘Mozart and the Myth of Reusable Coffins’ July 1<sup>st</sup>, 2013 accessed online July 7<sup>th</sup>, 2018 <http://michaelorenz.blogspot.co.at/2013/07/mozart-and-myth-of-reusable-coffins.html>. Perhaps the Recent studies have noted the effect of Emperor Joseph II’s rulings in Belgium noting it as the beginning of the ‘institutional history of the modern cemetery in Belgium’ as ‘the largest part of current Belgium was under Austrian rule back then’. C. D. Spiegeleer & J. Tyssens, ‘Secularizing funerary culture in nineteenth-century Belgium: A product of political and religious controversy’, *Death Studies*, 41 (1) (2017), p. 17.

<sup>908</sup> Wilde, *Ballad of Reading Gaol*.

The use of quicklime in the burial of executed offenders was reported during the closure of Newgate Prison and subsequent building of the Central Criminal Court on the same site.<sup>909</sup> In the years leading up to the work the parlous state of burials and overcrowded felons' lot were the subject of discussion. The Governor of Holloway Prison recorded that it was 'difficult to find room for the interment of any more prisoners.' On detailing the current burial arrangement he noted that 'the bodies are always buried in coffins filled with quicklime' noting that 'in all recent excavations the gravediggers have found nothing but the skulls and a few thigh bones.'<sup>910</sup> However, writing four years later the same Governor appeared to provide a caveat to his previous assertions stating that 'It is quite certain that the use of lime does not entirely destroy the ill effects of such burial; and it is said by some to intensify them.'<sup>911</sup>

Its additional disgrace as a punishment is apparent in several execution reports from outside the North East region in this period. Reporting on the remarkable execution of 'five pirates' at Newgate in 1864, *The Times* described the 'dim, close alley' that was the burial place within Newgate Prison and went on to state that 'here the corpses were thrown naked into graves full of lime, and covered by pavement blocks.'<sup>912</sup> Indeed, as King has noted *The Times* had very early form on quicklime, arguing in 1785 that in 'particular atrocious cases' it would create 'a greater terror' if the offender was 'hanged in secret and then thrown immediately into a private hole dug for them in a part of the prison ... and quicklime thrown over the dead body.'<sup>913</sup>

## **Lime Burial in the North East**

Despite the widespread belief of the use and purpose of quicklime for the burial of executed criminals, the Acts of parliament that entrenched burial behind the prison walls did not make specific provision for its use in burial. It is not then clear the

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<sup>909</sup> Newgate Prison was officially closed in 1902. Accessed 7<sup>th</sup> January 2019 <http://www.capitalpunishmentuk.org/newgate.html>.

<sup>910</sup> Letter from the Governor of H.M Prison Holloway, 17<sup>th</sup> October, 1892 'Burial Ground at Newgate for bodies of executed criminals' TNA PCOM 8/219/171904D

<sup>911</sup> Letter from the Governor of H.M Prison Holloway, 2nd January, 1896 'Burial Ground at Newgate for bodies of executed criminals' TNA PCOM 8/219/171904I

<sup>912</sup> *The Times*, 23 Feb 1864 cited in D. Copper, *The Lesson of the Scaffold*, p. 18.

<sup>913</sup> Hanway, *The Defects*, pp. 245–246. *The Times*, 7<sup>th</sup> December 1785 cited in Peter King, *Punishing the Criminal Corpse*, p. 131.

extent to which its use was widespread. Indeed, in the North East, despite detailed reporting on executions, particularly from 1868 onwards, the use of lime is not mentioned in any burial reports from the newspapers. However, despite no overt references there are a number of instances where it does still appear, which may be indicative of its wider use. More importantly, numerous reports attest to a wider societal belief that it was used on criminal corpses. At the 1875 burial of Richard Charlton behind the prison walls at Morpeth, newspapers noted that he was placed beside the grave of the last capitally condemned man in Morpeth, Ralph Joicey executed in 1846. The reports stated that in the excavations for Charlton's grave parts of Joicey's coffin had been revealed and the reporters were struck by the 'good state of preservation.'<sup>914</sup> Similar observations were noted in 1925 when Newcastle prisoners' remains had to be reinterred, following the closure of the prison. One newspaper noted the commonly held 'belief that quicklime used after execution leaves hardly a trace of the gallows victim.'<sup>915</sup>

There is a curious irony in the suppositions of the period that quicklime would rapidly destroy the body as most later studies have shown that the opposite would appear to be the case.<sup>916</sup> In the Prison Commissions' deliberations regarding the exhumation of prisoners at now closed prisons it was clear this belief is fully apparent. A report in 1925 detailed that seven prisons had been recently discontinued, noting that at Carlisle and Carmarthen the last executions were in 1886 and 1894 respectively, whilst Newcastle's was the most recent with the execution in 1919 of Ambrose Quinn.<sup>917</sup> Commenting on the dates of final hangings the report stated that 'with possibly the exception of Newcastle, no remains are likely to be found.'<sup>918</sup> In fact numerous remains were found in various states of preservation at the prison and

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<sup>914</sup> *Morpeth Herald*, 25<sup>th</sup> December, 1875.

<sup>915</sup> *Shields Daily News* 14<sup>th</sup> October, 1925. The newspaper went on to report that that to the contrary 'some of the remains were strikingly preserved.' Although not in all cases as in one coffin 'there was little to be seen.'

<sup>916</sup> E. M. J. Schotsmans et al., 'Effects of Hydrated Lime and Quicklime on the Decay of Buried Human Remains Using Pig Cadavers as Human Body Analogues', *Forensic Science International* 217, (1–3) (April 2012), pp. 50–59. That people believed it was an accelerant in the decay of bodies is unquestioned, one such study noted its frequent use by criminals in attempts to destroy the bodies of victims J. D. Laudermilk, 'Concerning Quicklime Burial', *The American Journal of Police Science* 3 (1) (1932), pp. 59–63,

<sup>917</sup> The seven prisons listed were Brecon, Carmarthen, Carlisle, Carnarvon, Hereford, Newcastle, Ruthin. Prison Commission Papers 'Executed prisoners method of burial' TNA PCOM 8/221/17190/105

<sup>918</sup> TNA PCOM 8/221/17190/105



further testament to quicklime's preservative effect can be seen in reports from the exhumation of prisoners at Newcastle Prison in 1925. In their letters to the Prison Commission the Governor of Durham Prison and the Prison's Medical Officer, both employed to oversee the exhumations, noted their findings

'I would submit that it is a reasonable deduction that the use of quicklime so far from accelerating the process of decomposition has hindered that process in a very marked degree and indeed that quicklime has acted as a preservative.'<sup>919</sup>

Concurring with the sentiments of his Medical Officer the Prison Governor opined that

'it was obvious from the fetid slushy pickle of rotten humanity that was exposed to view on exhumation that quicklime acts as a preservative of muscle, flesh, viscera and bones.'<sup>920</sup>

In fact, the Medical Officer recorded, it was the graves where quicklime 'apparently, had not been employed' where the decomposition was the most 'thorough'.<sup>921</sup> Indeed the findings at Newcastle were arguably the most influential in the creation of an undated Prison Circular that from henceforth dictated, amongst other stipulations, that 'Lime will not be used'.<sup>922</sup> Despite the apparent failings of the quicklime, what is clear is that a belief had been held that it acted to destroy the body and was a further dishonouring of the criminal corpse. Commenting after the closure of Newcastle Prison in 1925, one unnamed prison official lamented

'It is strange, but in one custom we are more barbarous than our ancestors in bygone days. It is the toll of the Felon's Plot....Prison Officials who have assisted in the last act of a murder drama will agree that it is a mournful business. The body lies in its plain shell- not naked and

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<sup>919</sup> Letter from Durham Prison Medical Officer, Robert Stuart, to the Governor of Durham Prison, 16<sup>th</sup> October, 1925. TNA PCOM 8/222

<sup>920</sup> Letter from Durham Prison Governor, HMA Hale to the Prison Commissioners, 9<sup>th</sup> November, 1925 TNA PCOM 8/222

<sup>921</sup> Letter from Durham Prison Governor, HMA Hale to the Prison Commissioners, 9<sup>th</sup> November, 1925 TNA PCOM 8/222. It is worthy of note that the Medical Officer labelled these bodies as 1-9 and they were numbered sequentially by date of burial, so these were the graves of people who had been buried the longest in the prison ground.

<sup>922</sup> Prison Commission Circular No. 1027. 29<sup>th</sup> December, 1922. Instructions to be observed in burying the bodies of executed prisoners. TNA HO 324/1.

covered with quicklime as was the custom until quite recent years.<sup>923</sup>

## A punishment continued

During a House of Commons debate on the 18<sup>th</sup> July, 1961 the Labour MP for Leeds West, Mr Charles Pannell, called for an amendment relating to ‘one of those things which is more in tone with the state of civilisation in our time.’ The ‘comparatively small matter’ in question was the current provision for the burial of capital convicted felons. Pannell opined,

I have said before that the degree of civilisation in a country is not determined by what is done about big things, but about the smaller things of life which sometimes affect those people who are friendless, alone or cast out. I cannot believe that, having executed a man, we should necessarily render such great harm and hurt to his relatives.

Pannell continued,

‘Reading through the old debates, it is curious to discover that people thought that both private execution and private burial, and certainly the ignominy of burial such as this, would be a great deterrent. Nobody would take that view today. We would look upon the burying of a body in quicklime within the precincts of a prison wall rather as something completely ghoulish and out of keeping with our time’<sup>924</sup>

The insinuation was clear: the disgrace attached to burial behind the prison wall was still alive and well over a century after its introduction.

Further testament to this can be seen in a curious addendum to the history of prison burial in the North East. In 1925 the Newcastle Corporation, in an economy drive directed by the Home Office, closed Newcastle’s Carlisle Square Prison and subsequently removed all of the prisoners present. The near 100-hundred-year-old

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<sup>923</sup> ‘An Unnamed Prison Official’ *Nottingham Evening Post*, 24<sup>th</sup> Oct, 1925.

<sup>924</sup> ‘Burial of Offenders’, HC Deb 18 July 1961 vol 644 cc1065-7. Accessed 25<sup>th</sup> March 2018 <http://hansard.millbanksystems.com/commons/1961/jul/18/burial-of-offenders>

structure on Carloli Square was to be taken down by the City Engineers Department and the site improved and cleared to make way for a telephone exchange. Stories abounded though of the plans for the removal of the graves of executed felons buried there. Speaking to the Newspapers, one prison commissioner stated

‘we are simply complying with the regulations obligatory on any private citizens. The ordinary procedure that applies when the remains are in any place which is going to be built upon is that the remains must be removed’.<sup>925</sup>

However, the actions taken were far from ordinary. The bodies were to be exhumed and reburied at nearby All Saints Cemetery, in the same parish as the prison. Great lengths were taken to avoid any public intervention or remembrance of the bodies themselves. One Prison Commission report proposed that whilst a plan of the graves should be afforded the Newcastle authority, they should ‘not’ receive the ‘Register of Graves which gives the name of prisoners and dates of executions.’<sup>926</sup> Reporting on the eventual reinterment the *Aberdeen press and Journal*, under the tongue in cheek headline, ‘‘all saints’ Cemetery’ detailed the clandestine operation,

‘In the darkness of the night and at an hour kept strictly secret the bodies of the murderers which lie in the precinct of Newcastle Gaol are to be taken up and reinterred in All Saints’ Cemetery.’<sup>927</sup>

The bodies of Newcastle’s capitally condemned were reburied with ‘neither bell, book nor candle...vouchsafed them, since no service will be held’; a final disgrace that betrayed a much longer history of punishment long after death.<sup>928</sup> One particular detail of the arrangements would have struck deep at the heart of Mark Sherwood, whose burial opened this chapter. His special request for an extra deep grave to save his body being disturbed, may not have been unfounded. On performing the exhumation it became clear that ‘several bodies remained unaccounted for.’<sup>929</sup>

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<sup>925</sup> *Shields Daily News*, 14<sup>th</sup> October, 1925.

<sup>926</sup> PCOM 220/17190105C

<sup>927</sup> ‘‘All Saints’ Newcastle Cemetery for 15 Murderers’, *Aberdeen Press and Journal*, 14<sup>th</sup> October, 1925.

<sup>928</sup> *Shields Daily News*, 14<sup>th</sup> October, 1925.

<sup>929</sup> *Nottingham Evening Post*, October 24<sup>th</sup>, 1925. The newspaper report suggests this may be attributable to the need to meet the wishes of ‘some relatives who could not bear the idea of the dead

Detailing the exhumation, Medical Officer Robert Stuart recorded of Mark Sherwood's grave, 'at a depth of about 11 feet there was no trace of coffin or body.'<sup>930</sup>

## **Conclusion:**

In one sense the punishment of burial behind the prison wall can be seen as something of an administrative afterthought. The vestige of a series of Parliamentary Acts whose primary concern was the removal of increasingly outmoded and, in the case of Hanging in Chains, ineffectual public punishments. However, its apparent insignificance in legislative history has led to an underestimation of its punitive power. To the condemned man or woman it was undoubtedly a feared punishment, their body buried unmarked, unclaimed and often unconsecrated. Furthermore, it carried a social and shaming stigma whose effect was felt far outside the prison walls by family and friends unable to bury their kin. As such, its continuation after 1834 runs counter to the general perception that the removal of dissection and the gibbet were symbolic endpoints in the punishment of the criminal corpse after death. If it was part of a 'civilizing' movement, we must surely ask civilizing for whom? Instead, it is perhaps better understood as the precursor to private execution and punishment in which the criminal body became property of the state in life and death and, as Richardson has said, 'more surely in the power of the punishing authority.'<sup>931</sup>

When set against the grander narratives of penal change these findings leave us on something of a middle ground. In one sense, the continuation of the punishment of burial throughout the period appears to validate the Foucauldian narrative that 'punishment will tend to become the most hidden part of the penal process', however one would be hard pushed to say that this resulted in the concomitant 'slackening of

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sleeping in unhallowed ground' although this would seem very unlikely given the intentions of the punishment.

<sup>930</sup> The exact same detail was reported regarding the grave of Patrick Forbes in 1850. Regarding George Vass' grave, the body is not expressly mentioned, but it is noted that 'there was no trace of lime to be seen in this grave.' Whilst the entry for John William Anderson (1875) noted that 'the body had been buried in its clothing. The bones were bare.' H.M. Durham Prison's Medical Officer, Robert Stuart, letter reporting to Durham Prison Governor dated 16<sup>th</sup> October, 1925. PCOM 222

<sup>931</sup> Richardson, *Death Dissection and the Destitute*, p. 75.

the hold on the body.<sup>932</sup> Instead, one can perhaps more easily demonstrate a tightening of control, with the criminal body now the property of the state in both life and death. Similarly, where the removal of the gibbet and dissection sit neatly in line with wider arguments of a 'civilizing' move away from the more repugnant features of public punishment, prison burial's continuation does not. Arguably the punishment of burials continuation more easily sits in a far longer history of additional abuses on the criminal corpse, particularly when one considers the intentionally destructive purpose of quick lime in the burial process and the evidence shown for the widespread cultural fears attached to burial. We are perhaps then closer to King's assertion of the earlier c19th that the authorities refused to 'give up the idea that murder should be punished more severely than other capital offences.'<sup>933</sup> Burial behind the prison wall carried the same power to strike fear into the criminal fraternity and spread shame to their immediate family and friends as its other attendant post-mortem punishments but carried the advantage of being hidden from public view. Furthermore, it's retention is a testament to the continuing power of the criminal corpse, with fears of recovery and martyrdom apparent in the eventual moves to remove all trace of the bodies both physically and metaphorically.

In essence then the prisoner's anonymity in death and physical and spiritual ambiguity is testament to a period in which there was a full-scale moral rejection of the murderer. The wider reception to the punishment of prison burial was in line with a growing understanding of murder as a crime from which the guilty gave up their place in the society. In one sense then the punishment was the perfect reflection of the prevailing sentiments of the period. The anonymity of a prison burial, the intended rapid destruction of the physical body with quicklime and the refusal of any claims for it, meant that murderers had in life and death a unique space outside of society.

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<sup>932</sup> Foucault *Discipline and Punish*, p.10.

<sup>933</sup> King, *Punishing the Criminal Corpse*, p. 163.

## Chapter Seven: Conclusion

This thesis is the first sustained study of capital punishment in the North-East of England between 1800-1878 and its attendant post-mortem punishments from 1752-1878. It has examined the changing incidence, presentation and application of capital punishment in the region in a critical period of changing penological practice. As such, it has highlighted the multifarious reasons for and motivations behind the shifting nature of execution and simultaneously placed the North East within the wider historiographical map of English execution. Furthermore, this study has highlighted the role of post-mortem punishment along a longer timeframe than previous studies, including the role of burial behind the prison wall. This conclusion will seek to bring together the central findings of the thesis and then place them within the broader landscape of the historiography of capital punishment. Following that, it will seek to offer potential areas for further investigation.

Firstly though, in concluding, it would behove us to look in detail at a direct comparison of two executions that bookend the period of this study. This is not just an exercise in neat periodisation, indeed there are numerous reasons why the comparison is a useful one. Firstly, the malefactors in question, Ewen MacDonald (1752) and Robert Vest (1878) were both male, both former military personnel (the former with the Scots Guard and the latter having served with both the Navy and Army) and both capitally charged for the crime of murder and were hanged and subject to variant forms of post-mortem punishment. Both were also significant examples of executions enacted under new legislation, MacDonald's being the first execution in the region following the 1752 Murder Act and Vest's the first in the North East following the handover of prison control to the Home Office, following the 'centralization of administration of the prisons' brought about through the 1877 Prison Act.<sup>934</sup> On initial examination, it would appear that this is where the congruence ends. MacDonald's execution took place on Newcastle's Town Moor in front of an 'extraordinary concourse of people', following a long procession through

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<sup>934</sup> Harrison, 'Justices and the Prison Act', p. 245; Vest's would have been the first, but the hangman William Marwood had to delay owing to the requirement of a 'professional engagement' in Chelmsford, where he was presiding for the execution of Charles Revell. *Morpeth Herald*, 3rd August, 1878. The Acting Under Sheriff wrote to the Home Secretary to announce the change from Monday 29<sup>th</sup> to Tuesday 30<sup>th</sup>. HO 45/9463/75491/5

the town, whilst Vest's took place behind the walls of Durham prison with only a few officials of the state present; the press and all members of the public denied entrance. MacDonald was helped up a ladder, from which he would be forced and ultimately strangled, with little or no consideration for the speed or efficiency of his death, whilst Vest's execution was over a 'drop' and enacted following relatively detailed examination of his frame and weight to minimize the pain and maximise the efficiency of his send-off. However, for all the ostensible differences in the presentation and circumstances of the executions a more detailed assessment shows a far greater congruence in the two cases.

Firstly, far from the intended opprobrium of the sentence, both men engendered great sympathy from the wider public; in MacDonald's case, in spite of his attempts to 'throw the execution (sic) from of (sic) the ladder.' Reports noting that, irrespective of his 'unbecoming' behaviour his death was 'pitied by everyone', as it was 'generally and *justly* believed that he had been grossly irritated to the perpetration of the crime for which he suffered.'<sup>935</sup> *A Last Dying Speech*, purporting to be MacDonald's statement 'left with a friend' alludes to the public sympathy too, noting 'how far I am guilty of this Murder, and how far I suffer for it, may be conceived from the general pity and sorrow which fills every impartial Breast for me.'<sup>936</sup> Similarly, in the case of Robert Vest, the jury found Vest guilty with a 'strong recommendation to mercy', in large part owing to evidence given regarding a serious mental injury sustained in combat.<sup>937</sup> Furthermore, reports noted concern regarding Vest's 'frequently expressed anxiety' about the future of his wife and five young children he was to leave behind. Indeed, the *Sunderland Daily Echo*, noted that Mr Haswell, Vest's lawyer, received a guinea from a concerned local lady and implored others to 'spend

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<sup>935</sup> *Newcastle Courant* 30<sup>th</sup> September, 1752. No doubt MacDonald's relative youth, nineteen years of age, also played a role in this, as was the case at the 1816 execution of John King at Durham where it was reported his 'youthful appearance...excited feelings of sympathy and compassion' amongst the crowd. *An Account of the Trial, Condemnation, Confession and Execution of John King*, (Durham, Printed Newcastle Re-Printed by J. Marshall, n.d), NCL *Local Broad-sides* (L029.3).

<sup>936</sup> *The Dying Words and Confession of Owen MacDonald*, NCL *Local Broad-sides* (L029.3)

<sup>937</sup> Vest's brother gave evidence detailing a head injury Vest had sustained whilst serving in India for the Horse Artillery, the result of a stab wound from a bayonet. Numerous petitions in Robert Vest's Home Office File attest to the widely known detail of his brain injury. One letter, from a Mr. B. J. Ord, begs for commutation of the sentence, despite never having 'seen or heard of Robert Vest before this unhappy occurrence'. Ord cites the grounds that there is 'a quantity of evidence to prove that he had been severely injured in his head...he might, therefore, be completely instance when he murdered his victim.' HO 45 9463/75491/15. Ultimately reports by Dr. Boyd on Vest at Durham Prison confirmed to the Home Secretary that he was 'sound in mind' HO 45/9463/75491/11

a trifle of their surplus money', offering to collect the money to be passed on, via Mr Haswell, to support Vest's surviving family.<sup>938</sup> We see here then, the same failures of the didactic message of the gallows, so lamented by seventeenth and eighteenth century reformers, still clearly apparent at the tail end of the nineteenth.

In highlighting these two cases what is brought into sharp relief is that there is as much congruity as there is contrast. For all the fundamental changes in the application of a punishment, we have very similar outcomes from each. Both men charged for murder, the result in part of drunkenness (or violence encouraged by drunken misunderstandings in MacDonald's case) and empathy engendered from the criminals' situation or behaviour. These two executions sit 126 years apart but, left undated, one could easily be mistaken as to which was the former and which the latter. In essence, we have here a perfect synthesis of the findings of this thesis. A punishment which has undergone fundamental reform and restructure yet is still so cruelly recognizable. This then is as much a story of continuity as it is of change, a point to which we shall return to later in addressing this thesis's implications for the existing historiography.

## **Summary of the findings**

In the first half of this thesis a detailed assessment of the incidence, presentation and reception of capital punishment in the North East of England was undertaken. Structurally it identified two distinct periods in the application of the death penalty. The first, between 1800-1868 and broadly defined as a period in which a move from a public to semi-public model took place and the second following the 1868 Capital Punishment Amendment Act in which a fully private period of execution began. An examination was undertaken of the motives and decision-making process that informed these changes. Chief amongst the findings is that there is a notable divergence across the region in terms of timescale and reasoning for why these changes took place. Durham's move from the formerly open and public site of Dryburn, to the exterior walls of Durham County Court that adjoined the Prison, was undertaken in 1816 and was the first of its kind in the region. However, previous

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<sup>938</sup> *Sunderland Daily Echo*, August 1<sup>st</sup> 1878



studies have missed significant changes in the execution spectacle in Northumberland that have led to it being misunderstood as a late adopter of execution practice witnessed elsewhere. In fact, from the first decade of the nineteenth century Northumberland was testing new and more central sites for execution whilst retaining much older elements of the execution spectacle, most notably a cart style gallows and elaborate processional elements. In the case of Newcastle, when set against a national picture, its transition to a prison sited execution was markedly late. This was owing to a number of factors, perhaps chief amongst them a low incidence of capital punishment that meant any provision for its undertaking in the period was largely reactive to circumstance. As such, planned earlier moves were hindered by outside forces, most notably a crowd crush in Nottingham. In as much both Newcastle and Northumberland's practice owed as much to the limited application of the punishment in this period as to any underlying penological ideology.

Chapter three examined the period of execution between 1868-1878. Following the passing of the 1868 Capital Punishment Amendment Act, the removal of the public from the execution spectacle dramatically transformed its presentation and operation far beyond simply removing the crowd. In one sense it was the logical conclusion of a punishment that had been in a steady retrenchment from the early nineteenth century. However, the chapter highlighted that far from the Act leading to a slow and steady retrenchment of the punishment, it was given a renewed ardour, particularly in Durham where 13 hangings took place in a ten-year period, just four fewer than had taken place between 1800-1868. Alongside this rise Durham witnessed the return of double and triple hangings, the latter practice having not been undertaken since 1785. This was arguably in reaction to a broader national crisis of Irish nationalism; a widely acknowledged threat to the state in the period that some previous studies of the region have argued did not resonate as powerfully in the North East.<sup>939</sup> The findings for Durham in this decade then appear far more in line with recent works that have questioned the happy coexistence of the Irish in the North East.<sup>940</sup> In stark contrast, Newcastle only undertook one execution in this

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<sup>939</sup> R. Cooter, *Paddy met Geordie*.

<sup>940</sup> F. Neal, 'English-Irish conflict in the north-east of England', in P. Buckland and J. C. Belchem (eds.) *The Irish in British Labour History* (Institute of Irish Studies, Conference Proceedings

decade, which was broadly in line with earlier figures, the six executions undertaken between 1800-1868 averaging at just under one execution per decade. Similarly, two executions were undertaken in Morpeth during this period compared to the 12 between 1800-1868, thus broadly in line across both periods with an average of just under two per decade.

Further investigation highlighted several ambiguities inherent in the 1868 Act that led to a divergence of approach in its application across the region. Following problems of administration and overcrowding due to press interest, most notably in the case of Mary Ann Cotton, the Sheriff and Visiting Justices responsible in the administration of executions at Durham, and to a lesser extent Morpeth, took increasingly draconian measures to regain control over access to the spectacle of the execution and its wider dissemination. After 1873, in Durham the press were removed entirely from future executions and with their exclusion there was a concomitant move to control the narrative emanating from the execution. This appears in line with earlier studies of Lincoln noting the authorities' attempts to 'sanitise' the narrative of executions.<sup>941</sup> Similarly, numerous attempts, made at post-mortem public jury inquests, to ascertain the last words of the condemned were rejected.

## **Post Mortem Punishments**

In the latter half of the thesis a sustained study of post-mortem punishments was undertaken from the passing of the Murder Act 1752, to the introduction of centralized control of the prison system in 1878. Numerous coherences have been found with recent, broader national studies, from the exclusive use of the gibbet for male malefactors to the predominance of males subjected to the punishment of dissection. Furthermore, there is concurrence in the punishment of dissection only ever being used in the case of a conviction for murder, whilst gibbeting was used additionally for a selection of lesser crimes. In the North East, where post-mortem records survive, of the 26 people who were executed between 1752-1834 on the

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December, 1993); D. M. Jackson, "'Garibaldi or the Pope': Newcastle's Irish Riot, 1866", *North East History*, 35 (2001), pp. 49-76; For the differing and localised examples of anti-Catholic and Irish expression in the North East see J. Bush, *"Papists" and Prejudice: Popular Anti-Catholicism and Anglo-Irish Conflict in the North East of England, 1845-70* (Cambridge Scholars Publishing, 2013).

<sup>941</sup> Tulloch, *Privatising of Pain*, p. 448.

charge of Murder or, a lesser charge with a post-mortem punishment, 21 (87.5%), were sentenced to dissection and only three were gibbeted (12.5%). This is compared to Tarlow's findings that nationally over 80% of those sentenced to post-mortem punishment were dissected, whilst only 9.6% were gibbeted.<sup>942</sup> Chapter four also noted that in the two instances in the region where the historical record does not declare the post-mortem provision, it would seem most likely that dissection was undertaken, which would leave the North East's use of the punishment at 92% of all murder charges. In this sense it could be argued to have been at the upper end of the national statistics on the punishment. When one considers that Newcastle was one of a few places in the country (aside from Oxford and London) with a Barber Surgeons' Guild, this could well help account for a spike. Indeed, national studies have noted that by the nineteenth century Newcastle was sometimes surpassing London in medical expertise.<sup>943</sup> A further finding was that no one region experienced or practiced dissection in the same way. In Northumberland the practice was never undertaken in the period and in Durham it would appear that its application was often tokenistic and limited. Whilst Newcastle often undertook prolonged and tiered dissections that took place over a number of weeks and had tiered audiences, creating a multi-layered spectacle of justice.

Chapter five assessed the punishment of the gibbet. It was applied as a post-mortem sentence three times in the period covered, twice in cases brought before the assizes and once in cases before the Northumberland Assizes. This post-mortem provision was never used in Newcastle in this period. As mentioned, with regards dissection, this may have as much to do with the pressures from a medical community with a renowned Barber Surgeons and a pronounced shortage of cadavers as to any particular localised judicial distaste for the spectacle. In all instances of its use it would appear that it was enacted as a punishment for exemplary crimes in the particular locality. One of the central findings of the chapter is that they also all contained within them either a direct attack on the judiciary, as in the case of Jobling and Hazlitt, or in the case of William Winter a long-held interest

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<sup>942</sup> Of the remainder Tarlow noted that 'Around 6.5 % of convicted murderers were pardoned, a few were burned at the stake and around 2 % died in jail before their execution.' Tarlow, *Technology of the Gibbet*, p. 669.

<sup>943</sup> Hurren, *Dissecting the Criminal Corpse*, p. 145.

by local magistracy in the criminal's capture. This was by no means the exclusive reason for the sentence as all had further mitigating circumstances, but it is a pronounced commonality. In the case of Northumberland, William Winter and the Winters' gang's reputation preceded them and had long been deemed a scourge on the wider community. Indeed, official prison reports from as late as the 1830s were still mentioning the long-felt effects of the Winters that had been a 'terror to the neighbourhood' for 'several generations.'<sup>944</sup> Had Hazlitt's attempts stopped with the initial robbery of Mrs Benson and not continued on to robbing the mail, he may well have found himself suffering a lesser sentence or subject to the dissecting surgeon's scalpel. Finally, William Jobling's sentence was as much instructive of the febrile nature of industrial relations in the period and arguably, given the enormous expense in the guarding of the gibbet and the evidence of caution around rumours of attempts at recovery, had the punishment of dissection still been available to Justice Parke, it may well have been used. They were then all crimes that had elements that marked them out for exemplary punishment.

Despite the prevalence of dissection over gibbeting, chapter five has shown that in the North East at least the latter had a far more significant and lasting effect on the region. The physical structures long outlasted the punishment and, in some cases, even became topographic features. In the case of Robert Hazlitt of Gateshead, the pond over which his gibbeted body resided in death later took a derivation of his name. In this sense then the gibbet, far more than dissection and the gallows, was the lasting symbol of justice enacted in the region. Its power to shame and stigmatise the criminal body and wider society, apparent right up until its removal from the legislative arsenal, as the successful attempts to surreptitiously steal Jobling's body from Jarrow Slake attest to.

Finally, the chapter has illustrated that gibbetting's removal as a post-mortem penal option is testament as much to an increasing abhorrence towards the spectacle as to its frequent ability to make a martyr from a malefactor. Indeed, to this day William Jobling's name, far from disgraced, has retained the status of a subversive local

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<sup>944</sup> *Parliamentary Papers: Volume 31*, (W, Clowes & Sons, Stamford Street: H.M Stationary Office, 1838), p. 425 accessed February 14<sup>th</sup>, 2019, <https://play.google.com/books/reader?id=m2ASAAAAYAAJ>

hero; adorning numerous ales, plaques and even the subject of operas. As one historian writing in the late 1950s noted, 'even now, in the oral tradition of the crime current among the miners of the area...one hears of...Jobling himself being the victim of a miscarriage of justice, although anyone who has read the evidence at the trial would find the story incredible.'<sup>945</sup> Testament to both the strength of industrial tensions in the period and what Marshall described as the power of 'collective memory' and 'local myths' to 'occasionally pander to the prejudices of the audience.'<sup>946</sup>

The final chapter of this thesis demonstrated that the role of prison burial has been overlooked in the broader historiography of post-mortem punishment. Even recent studies focused exclusively on the criminal corpse have tended to overlook the continuation of burial, with a few notable exceptions.<sup>947</sup> Numerous instances in the region in this period pay testament to the association of prison burial with fear and shame attached in both the criminal's and his wider societal relations' minds (not least the efforts afforded to the recovery of the coffin in numerous instances in Morpeth, Newcastle and Durham). In as much the punishment of prison burial is better understood alongside other shaming punishments, more broadly perceived as having died out in the early nineteenth-century. The findings in this chapter and those that precede it have serious implications for theories dominant in the historiography; a point to which we now turn.

### **The changing presentation of punishment**

In studies of eighteenth and nineteenth century penal practice Evans' assertion that 'almost all major European states...saw a diminution of public punishment' has become something of a truism.<sup>948</sup> By the end of the period in question a punishment once played out in front of thousands on large open ground, usually at the edges of the governing locality, had become a spectacle witnessed in private by a few

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<sup>945</sup> N. McCord, *The Murder of Nicholas Fairles, Esq., J.P., at Jarrow Slake, on 11<sup>th</sup> June, 1832*. *South Shields Archaeological and Historical Society Papers* Volume 1, No. 6. 1958. p. 19

<sup>946</sup> A. Marshall, 'The Death of Nicholas Fairles: Law and community in South Shields, 1832', *North East of England History Institute* (2009). p.3.

<sup>947</sup> P. King, *Punishing the Criminal Corpse, 1700-1840: Aggravated Forms of the Death Penalty in England* (Springer, 2017).

<sup>948</sup> Evans, *Rituals of Retribution*, p. 895.

appointed officials. In this sense the North East does not provide evidence to the contrary. However, it is the nature of when these changes took place and why that remains the subject of intense focus and where the North-East offers interesting new insights into the wider historiography of punishment.

It is clear that the North East has an interesting and largely unheard story to tell in the historiography of capital punishment. However, in redressing the widely acknowledged gaps in our understanding of English execution in the North East, this thesis does not seek to make the same mistake of the grander narratives of historiographical change, by rejecting a coherent 'English' or indeed 'European' experience of execution and simply replacing it with a unified North-East experience. We must return then to the questionable nature of a 'region' highlighted at the outset of this thesis. In seeking to define a 'regional experience' all historical narratives rely, in some degree, on the neat combination of neighbouring localities that often defy this simplistic categorisation. Despite their geographical proximity and combined places on the Northern Circuit of Assizes one of the central findings in this thesis is that we must take great caution when speaking of a 'provincial' or 'regional' experience of execution. Both imply a consistency across geographically close areas that was often far from the case.

Perhaps the clearest example of this divergence in approach can be seen in the adoptions to the presentation of punishment in the region. The 'civilizing' theory of change, elucidated most eloquently in the work of Spierenburg, identified a broadly progressive narrative in which change emanated from the centre.<sup>949</sup> In this sense, any evidence to the contrary or lateness of application has been understood as indicative of what Garland termed 'laggard participants' or Foucault saw the exceptions that 'flickered momentarily into life' during the 'dying out' of the 'gloomy festival of punishment.'<sup>950</sup> When applied to the English experience of execution it is argued that we see a steady rise north from London in the rolling out of centralized practices. Even in narratives that have questioned the modernity of this change, such as in the work of Devereaux, there is an underlying acknowledgement of a

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<sup>949</sup> Spierenburg, *Spectacle of Suffering*.

<sup>950</sup> Foucault, *Discipline and Punish*, p. 8.

steady flow out from the centre of executions relocating to central, largely prison based, sites.<sup>951</sup> It would appear that Durham, much like fellow Northern Circuit assize town York, fits this model neatly; the need for a new prison arising from a growing need for clear commercial access through the main thoroughfares. However, the concomitant assessment that it was therefore a 'laggard participant' is harder to square. Indeed, in this light Durham can be seen as something of a pioneer, adopting the model far sooner than numerous more southerly sites of justice.<sup>952</sup>

In the case of Newcastle and Northumberland the picture is less clear. In one sense the lateness in operation of central, prison sited executions, Northumberland (1846) and Newcastle (1850), could on first glance be the exceptions that 'flickered momentarily into life.'<sup>953</sup> However, what these broadly teleological approaches mask is the nuance in regional decision making and, in the case of Northumberland, earlier changes previously overlooked. They also belie the fact that capital punishment was not so pressing a concern for large swathes of the country. As established in chapter two, contrary to earlier studies of the region, Northumberland underwent a period of significant experimentation in the presentation and location of executions far earlier than previously asserted. From the first decade of the nineteenth century moves to a more central location were adopted and eventually, in the 1820s to an execution at the exterior of the Old Gaol. Furthermore, assertions of its late adoption of prison based executions mask a 20-year gap in which the new prison was available, but no execution presented itself. In this sense Morpeth is better understood as an innovator in the region and a place, by the 1830s, of limited execution as opposed to a region at the tail end of a series of laggard participants in a wider London led change. The same is true of Newcastle, despite having the new Carlisle Square prison in place for the siting of executions from 1829, the executions of Jane Jamieson (1829) and Mark Sherwood (1844), both took place on the Town Moor. The latter was due in large part to fears that the tight side streets surrounding the

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<sup>951</sup> Devereaux, *Recasting*, p. 140. Devereaux saw the changes in the presentation of less indicative of a new, modern system of execution, but instead the last bastion of an older system of punishment seeking to regain control over a chaotic spectacle.

<sup>952</sup> Most notable amongst these are Northamptonshire 1819, Bristol City 1821, Norwich 1829, Maidstone 1831 and Nottingham 1832. Accessed 17<sup>th</sup> January, 2018  
<http://www.capitalpunishmentuk.org/explaces2.html>

<sup>953</sup> Foucault, *Discipline and Punish*, p. 8.

prison were not best placed to accommodate the streams of people that would attend; a fear engendered by a very recent crush at a Nottingham execution.

Arguably, in the case of Newcastle and, to a lesser extent, Northumberland it is the absence more than the constant presence of capital punishment that informed nineteenth century penological presentation. Perhaps the strongest proof for this point comes in the apparent lack of provision made for execution in the construction of Carlisle Square Gaol. As chapter two has highlighted, it is not clear that its undertaking was considered in the construction of the new prison. When one acknowledges that these were not buildings created in isolation, indeed earlier studies have noted Architect John Dobson's fact-finding trips to London, Liverpool and Edinburgh for inspiration and arguable Belgian influences, its absence then becomes less an oversight and more indicative of a region for whom the administration of capital punishment was not a central and present concern.<sup>954</sup> This is particularly apparent when we see the largely reactive nature of the changes to the final public executions that followed Sherwood's. In the cases of Patrick Forbes in 1850 and George Vass in 1863 the execution sites change dramatically and the provisions, particularly in the case of Forbes, are extraordinary; a large breach in the prison wall made to accommodate the prisoner being seen by the public. The argument for a proactive, ideologically driven, London led change in presentation appears to be wanting here.

Perhaps then we are best to look to Evans, whose forceful work on German penal history, found both Eliasian 'civilizing' theory and the Foucauldian narratives of internalized discipline, useful to a point, but ultimately left wanting. Where Evans found these theoretical constructs uninstructional was in their assessment of the superior efficiency of the nineteenth-century state. Regarding Spierenburg's Elisian reading of changing punishment, Evans believed Spierenburg 'exaggerates beyond what is permissible the contrast between the insecurity of the early modern European state and the stability of its nineteenth and twentieth century.'<sup>955</sup> Similarly, a Foucauldian narrative in which brutal public spectacles of state power declined as

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<sup>954</sup> Faulkner & Greg, *John Dobson*, p. 41.

<sup>955</sup> Evans, *Rituals of Retribution*, p. 893.



state regulation and carceral punishment grew, suffers under further scrutiny. The logic of this steady trajectory of internalized discipline and a new regulatory and behavioural control 'undreamed of in the past' would surely imply a concomitant decline in the more brutalizing and barbaric punishments of previous eras.<sup>956</sup> However, as the figures for post 1868 executions show, in Durham, far from a decline in capital punishment we see a dramatic rise in its application. Similarly, we see a return to triple and quadruple executions, a spectacle long believed to have vanished from the penal system. In the evidence presented in this thesis of the North East experience Evans' criticisms and caveats of the dominant theoretical narratives would appear to be particularly prescient. Right up until the eventual centralizing of prison and nationalization of the execution spectacle in 1878, engendered through the Prison Act 1877, we see numerous examples in which the presentation and application of capital punishment is dictated, less by a strong and centralized state than by a plethora of local administrative and judicial officials acting on the immediate circumstances presented to them.

So, in acknowledging the inability of the macro-histories of change to fully recognize the nuance of regional experience, it would seem apposite to turn to theories of localised control and regional exceptionalism for illumination. This is not an attempt to negate the efficacy and utility of the grand narratives of change, but instead to acknowledge that we have a murkier picture appearing, one where the influence of the central state and broadly ideological positions emanating from other regions is clearly present but is not the guiding reason for decisions made. Similarly, we see these multifarious influences manifesting to differing degrees across the neighbouring regions sampled.

Perhaps the best evocation of the arguments for a more diluted and localized system of control can be found in the works of Peter King (latterly with Richard Ward), focusing on what he termed 'justice in the margins.' Path breaking work on the counties of Essex and Cornwall in the mid eighteenth to mid nineteenth century, led to the assertion of judicial decision making and prosecutorial practice, that

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<sup>956</sup> Foucault, *Discipline & Punish*, p. 10.

‘some of the key changes in judicial policies...were not determined primarily by parliamentary legislation or by central government. Rather it was the informal practices, and not infrequently the decisive reforms, adopted by court judges, juries, local magistrates and other local decision makers.’<sup>957</sup>

This would appear particularly apposite in the case of the North East, both in understanding the difference in respect to London and indeed to variance in the neighbouring counties sampled. Much as the detailed statistical work of King and Ward and more recently Bennett and Walliss (in Scotland and Wales respectively), have shown that these centralized narratives have overplayed the red in tooth and claw ‘Bloody Code’ narrative for certain provinces, so it would appear that the same questions and inadequacies appear in our accepted narrative of the changing presentation of punishment.<sup>958</sup>

In acknowledging these regional differences Ward and King looked to more esoteric theoretical explanations, particularly the work of Scott on Upland South East Asia. Scott’s work argued, particularly of ‘hill societies’ that their relative proximity to the centre was indicative of how far they concurred with the dominant cultural and legal mores. In essence, the ‘closer and larger the state the more of the conversation it will usurp.’<sup>959</sup> In the case of the eighteenth-century North East this argument has much to merit it. If one wanted proof of the isolation of the eighteenth-century North East from the centre of power, one need only look to descriptions of travellers passing through ‘the loneliness of the bleak’ Gateshead Fell, ‘a terror to travellers’ or the numerous reports and fears around roaming gangs in the Northumbrian Hinterlands.<sup>960</sup> Indeed, at first sight it would appear that the same reservations highlighted of the eighteenth century, regarding the limitations of the cultural and political influence of the British state potentially reach much further into the mid to late nineteenth. Indeed, there are instances where a distance is still apparent; in

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<sup>957</sup> King, *Remaking Justice from the Margins*, p. 4.

<sup>958</sup> King & Ward, ‘Rethinking’; Bennet, ‘Capital Punishment’; Wallis ‘The Bloody Code’.

<sup>959</sup> J. C. Scott, *The Art of Not being Governed: An Anarchist History of Upland Southeast Asia* (New Haven, 2009), p. 305.

<sup>960</sup> Morgan and Rushton, *Rogues and Thieves*, p. 77; *North Country Lore and Legend, Monthly Chronicle*, (March, 1888) p. 114.

particular the decision of the presiding Judge, Justice Parke, in the 1832 case of William Jobling regarding the post-mortem punishments available to him.<sup>961</sup>

However, these arguments for a disconnected region, in the mid to late nineteenth century are far harder to square. Key advances, such as the burgeoning railway system being just one obvious addition in the period which alleviated the state's earlier issues of governing 'distant and inaccessible regions'.<sup>962</sup> Also, in many senses parts of the North-East *did* mirror established national patterns relating to capital punishment. Firstly statistically, key trends such as the rise of punishments in the wake of eighteenth-century post-war demobilization, the declining incidence of capital punishments for crimes other than murder following the Judgement of Death Act 1823 and the gendered post-mortem provisions.<sup>963</sup> Similarly, culturally we see, amongst the local power brokers in the regions, the language of 'civilized' behaviour was regularly invoked to question the efficacy of capital punishment. As highlighted in chapter two, at the specially adjourned meeting of Newcastle Council in 1844, frequent references were made to the punishment being at odds with an 'enlightened and humane society' and numerous references were made to penal practice around the world.<sup>964</sup> The North East, in this period then, is in no real sense an entirely politically and culturally disconnected 'other' operating outside the auspices of the central state. Indeed, it is in acknowledgement of this that its uniqueness of approach to problems of presenting punishment, demand detailed inspection. Indeed, further examination has highlighted notable points of difference.

In acknowledging the limited reach of the English state to particular regions, previous studies have often been guilty of overplaying the coherence of the message coming from the central governing authority itself. Consider the evidence presented in chapter three regarding with whom power ultimately lay in the administration of private executions. The debates at parliamentary level made clear that far from coherence, confusion often reigned. Unsurprisingly this led to instances of regional

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<sup>961</sup> Battell-Lowman & Tarlow, *Harnessing the Power* p. 172.

<sup>962</sup> King & Ward, *Rethinking*, p. 162.

<sup>963</sup> Morgan and Rushton, *Rogues and Thieves*, p. 64.

<sup>964</sup> In proposing his motion for abolition Alderman Headlam cited instances in Belgium, Bombay and Tuscany regarding the retrenchment of capital punishment and its relative success. *Newcastle Town Council 1844* p. 211.

misapprehension and ultimately misapplication of the intended legislation; a confusion that required clarification by the Home Secretary as late as 1880.<sup>965</sup> The limited acknowledgement of this confusion is probably more indicative of what has previously been noted as the ‘singular capacity of English state forms to accommodate substantial changes whilst appearing to preserve an unbroken evolutionary link.’<sup>966</sup> Furthermore, if this argument of disconnection from the centre is to work for the North East it would appear problematic, that some parts were more disconnected than others. When we consider the rates of execution in the decade following the Capital Punishment Amendment Act one would be hard pushed to see anything other than total dissonance between Newcastle and Durham. Here we may find much needed clarity from the few previous studies of the criminal landscape in the region sampled and a return to a more localized focus.

Previous work on crime in the North East region in the eighteenth century offers useful insight and concurrence with the findings made here. Morgan and Rushton’s assertion, of neighbouring differences in prosecutorial practice, that it was a ‘safe conclusion’ that it was ‘perfectly possible for county benches to promote styles of punishment entirely distinct from those of their neighbours’ appears particularly apposite. Their findings become particularly pertinent in explaining instances of Durham’s exceptionalism. In their coverage of the eighteenth-century, Morgan and Rushton noted Durham’s differing approach in prosecutorial practice when compared with Newcastle and Northumberland; particularly in its relative refusal to adopt the punishments of transportation and imprisonment over the more public punishments available. A finding of which Morgan and Rushton argued made Durham ‘more typical of some of the counties further south’ than of its neighbours. Set against the findings in this thesis this would appear to establish a much longer line in which different neighbouring localities took a very different approach in matters of criminal justice. Similarly, previous findings in the North-East of ‘no simple evolution’ from “traditional” to “modern” forms of punishments taking place feels entirely in line with

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<sup>965</sup> *Capital Punishment - The Prisons Act, 1868 – Executions in Kirkdale Gaol.* HC Deb 05 March 1880 vol 251 cc431-8 accessed January 1<sup>st</sup>, 2019 <https://api.parliament.uk/historic-hansard/commons/1880/mar/05/capital-punishment-the-prisons-act-1868>.

<sup>966</sup> P. Corrigan & D. Sayer, *The Great Arch: English State Formation as Cultural Revolution*, (Oxford: New York: Basil Blackwell). p. 17.

the findings for the nineteenth century.<sup>967</sup> Instead neighbouring regions made substantial changes along radically different timelines and for reasons dictated more often than not by local circumstances.

More importantly though we see that these major decisions in the presentation of punishment were more often than not made by local judicial and administrative officials. Just as early work on Newcastle prison has shown, the legislative process may have been at a national level and centrally dictated but in reality was 'strongly marked' by the 'personalities and penal philosophy' of those that presided over its enactment in the localities.<sup>968</sup> Arguably then it was these local administrative officials that wielded the greatest control and power to interpret punishment. When this is acknowledged the divergence in penal process between neighbouring regions becomes clearer. Furthermore, the arguments for the influence of grander narratives of control or increasing civilization, so heavily reliant on a dominant central authority, become less instructive. Where then we can perhaps make a clearer distinction is to what extent the operation of capital punishment was proactive or reactive. This has deeper ramifications for our understanding of the motivations behind changing penal practice. Particularly, in the executions undertaken in Newcastle between 1829 and 1868 the decisions surrounding the presentation of the spectacle are largely reactive. In the case of Mark Sherwood circumstances, mere days before the spectacle, led to a dramatic shift in the planned operation of punitive power. Similarly, the positioning and presentation of the spectacle changed at each execution that followed. The only consistent being the increasing physical distance placed between the crowd and the condemned, with the final spectacle taking place on the roof of the gaol. In many ways it is far more in line with studies of earlier periods in which the state was described as a 'reactive' one.<sup>969</sup>

What we are left with then appears particularly difficult to square. By the mid to late nineteenth century we have a culturally and politically connected region, enacting its own rules in radically different ways and along radically different timelines from both

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<sup>967</sup> Morgan and Rushton, *Rogues and Thieves*, pp. 72-73.

<sup>968</sup> R. Cranfield, 'Durham Prisons in an Age of Change', *Journal of the Durham County Local History Society*, 28 (1981), p. 43.

<sup>969</sup> L. Davison et al, 'Introduction', *Stilling the Grumbling Hive* (Allan Sutton, Stroud: St Martin's Press, New York, 1992) pp. 1-24.

London and neighbouring areas. In many senses this is a reiteration of an earlier heeding that we too often, from the bigger histories of change, gain a “false impression of the homogeneity of the British state.”<sup>970</sup> We are left on a slightly murkier middle ground in which the disconnection of parts of the North East are not so pronounced as to justify it as a disconnected other, particularly in the nineteenth century. Yet clearly the administrative concerns, pronouncements on punishments and the decisions made thereon are predominantly local. One need only consider in the case of the 1844 abolition debate in Newcastle in which we see how a locality can be seemingly cogniscent of a ‘civilizing’ discourse, indeed holding debates at Town Council level framed in those terms, and yet simultaneously enacting public executions on the Town Moor. This dissonance becomes clear when we acknowledge that the key opposition, in the debate, to the punishment’s abolition was presented by Sheriff Cookson himself.<sup>971</sup>

## **Post Mortem Punishments**

Having addressed the implications of this thesis’s findings on the changing nature and presentation of execution we now turn to its implications on the historiography of post-mortem punishment. Once again, we see initial congruence with earlier findings showing that the North East was not an entirely disconnected other. Findings for the use of the gibbet and dissection appear broadly in line with national practice, the higher rate of dissection being expected for a region with a strong medical community. Similarly, the exclusive use of gibbeting for men and the judicial predominance of dissection over gibbeting sit neatly within the broader national picture.

The gibbet became a punishment for only the most exemplary crimes and was used to address issues deemed crucial in the relevant localities. In the case of William Jobling the relative lateness of the punishment, given broader national trends of its declining use could be read two ways. On the one hand it could be seen as further

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<sup>970</sup> King and Ward, *‘Rethinking’* p. 202.

<sup>971</sup> This finding of Newcastle appears counter to King and Ward’s findings that there was a higher propensity in the peripheries of Sheriff’s, most notably in Wales and Cornwall, who were ‘especially prone’ to opposition of the death penalty. King & Ward, *Rethinking*, p.190.

testament to the late adaptation in the north of broader penal changes and sentiments towards punishments emanating from the south of England. On one reading, this would fit in line with earlier assessments in which the North East was a late participant in a broader national change. However, given the judge's stated dilemma over the provisions available to him, expressly his unsurety regarding the status of the impending Anatomy Act 1832, it would seem more apparent that he deemed it the only punishment available to him. In this sense it is less indicative of a delay in the application of a centralised criminal justice programme and more enlightening as to the febrility of industrial relations in the period. Similarly, it is clear that, as with the presentation of execution, different regions took different approaches to the application of post-mortem punishment. Newcastle, in this period, never undertook the post-mortem penal option of the gibbet, whilst Durham used it twice. This was in large part owing to the predominance and influence of the medical community in the region and the long-established shortage of cadavers for practical instruction. A shortage that continued long after the 1832 Anatomy Act.

Where these narratives of the influence of local judicial control are less clear is in the continuation of the punishment of burial within the prison wall. Recent path breaking studies into post-mortem punishment noted correctly how often histories of execution tended to end at 'the hanging tree, rather than the dissection table.'<sup>972</sup> However, in their commendable collective attempts to remedy this gap, it could be argued that they have been guilty of a similar mistake. Recent histories of post-mortem punishment have tended to end on the dissection table or at the gibbet, overlooking the continuation of one punishment after death that continued far beyond the Anatomy Acts and Hanging in Chains Acts of the 1830s; namely the burial of the criminal body within the prison walls. This thesis has shown that its continuation was enshrined in both the legislation that removed dissection and gibbeting and should therefore be seen in a far longer line of post-mortem punishment than earlier studies have presumed.<sup>973</sup>

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<sup>972</sup> R. Ward, 'The Criminal Corpse', p. 66.

<sup>973</sup> There are notable exceptions that have been addressed in earlier chapters.

The history of attempts at the recovery of the body from the gallows by friends and family and the fear of the lack of the proper repose of the soul is a well-established one.<sup>974</sup> This anxiety was no less redolent in the North-East, numerous instances abounded of attempts to recover the body and attempts by the authorities to remove the coffin from the immediate execution crowd. From changes in the construction of the gallows, including hiding the coffin underneath the drop and out of sight, to notable occasions where the coffin took a separate route from the condemned to the gallows, we see an awareness by the authorities of the importance placed on proper burial in the public's mind and the lengths some would go to achieve it. This same popular opprobrium to the refusal to recover the body is apparent in the great lengths gone to to retrieve William Jobling's body from the gibbet case, stolen surreptitiously at night, no simple feat given its placement out on a body of water. Similarly, unheeded requests by prisoners, most notably Mark Sherwood at Newcastle, to have a proper burial and a deep grave are evidence of the fear amongst the condemned of the provision for their soul as much as their body.

One reason for this historiographical oversight may well have been the focus shift provided by Richardson's earlier path-breaking assessment of the Anatomy Act. Its central contention being that, via the Anatomy Act, what had once been an offence for society's worst crimes became one for poverty.<sup>975</sup> As such, the historiographical pendulum has swung from a focus on a criminal punishment to one on wider society, the implication being that post-mortem criminal punishment ended in 1832. When combined with the fact that the punishment of hanging in chains was not enacted after 1832, despite remaining on the statute book for another two years, we can see where this assumption can be made. In this sense the removal of the earlier attendant post-mortem punishments have often been seen in a longer line of what Evans noted as the 'banishing of the more baroque cruelties.'<sup>976</sup>

This thesis contends that its continuation as a punishment is only fully understood when contextualised alongside the dramatic changes to the capital statutes from the 1820s onwards. What had once been a punishment exclusively for the crime of

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<sup>974</sup> Linebaugh, 'Tyburn Riot', in Hay et al. (eds.) *Albion's Fatal Tree* pp. 65-117.

<sup>975</sup> Richardson, *Death, Dissection*, p. xv.

<sup>976</sup> Evans, *Rituals*, p. 895.



murder had become a punishment for all criminals. The rapid dismantling of the so-called Bloody Code meant that, by this period, although a number of crimes were technically still sentencable by death, 'only murderers were actually executed.'<sup>977</sup> Here then we arguably see another point of continuation not change across the long period studied. The same unique place afforded to murder in criminal law by the 1752 Murder Act was still very much alive in 1878. It is also testament to the continuing power of the criminal corpse, long after the retrenchment of the more expressly physical post-mortem punishments. As noted, in chapter six, numerous contributors to the 1866 published *Report of the Capital Punishment Commission* noted the expediency of prison burial, not least for the removal of any prospect of public martyrdom or criminal celebrity surrounding the corpse.<sup>978</sup> Similarly, its continuation as a punishment long after the period of this thesis pays testament to its problematic place in penal policy. We therefore can arguably see the criminal body in death situated in a much longer line of state fear towards its power than previous studies have noted. With the further entrenchment of the punishment in both the 1834 Hanging in Chains Act and 1868 Capital Punishment Amendment Act, we arguably see instead the continuation of additional punishments long into the twentieth century.

Without a broader national picture, a point to which I will return, we must be cautious in generalizing how the punishment was enacted across the country. However, what is clear is that it was undertaken in a similar fashion across the North East. Shorn of alternative penal options, unlike their earlier counterparts, these decisions become less about local distinction in application and more about an increasing, centralized control on the criminal corpse. In order to understand this continuation, it would be informative to return to the earlier grand narratives of change, that proved less instructive in parts of the North East for explaining the changing presentation of execution. Foucault's assertion of shifting penal policy that 'one no longer touched the body...and then only to reach something other than the body itself' appears particularly prescient here.<sup>979</sup> In the North East, at least, the criminal body

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<sup>977</sup> Digital Panopticon, 'Punishments, 1780-1925'. Accessed 11<sup>th</sup> Dec 2017, [https://www.digitalpanopticon.org/Punishments\\_1780-1925](https://www.digitalpanopticon.org/Punishments_1780-1925)

<sup>978</sup> *Report of the Capital Punishment Commission 1866*

<sup>979</sup> Foucault, *Discipline and Punish*, p. 11.

increasingly disappears from both the scaffold and from the wider society from which it was drawn; isolated, stigmatized and marginalized even in death and more surely the property of the state in life and death. There is a crucial caveat here though, the use of quicklime in the burial of criminal bodies. This practice would appear at odds with Foucault's assertion of the rescinding of physical and destructive punishments after death. As this thesis has shown, irrespective of how widespread its use was, the implication of the provision was clear and its purpose was interpreted widely as being to cause the swiftest possible destruction of the criminal corpse. It would benefit us then to return to Richardson and her assertion that the criminal body was 'more surely in the power of the punishing authority.'<sup>980</sup> In this light the punishment then appears in a longer line of what King noted as the ruling authority's refusal to 'give up the idea that murder should be punished more severely than other capital offences.'<sup>981</sup> In its attempts to punish then we see congruence with what Garland asserts of modern American penal policy, that outward signs of physical suffering and punishment are removed, as far as possible, and hidden 'behind the scenes when it is not' leading to a system that derives legitimacy of punishment from the 'disappearing body'.<sup>982</sup> The picture then is complex, a confluence of state and local influences in flux across periods and regions over the presentation of the execution and punishment of the body. Whilst largely reactive to the needs of the locality the decisions made were still underpinned by central legislation, albeit it a legislative programme open to wide interpretation. In this sense we have a complimentary approach between the grander narratives of change and the localized histories of decision making and penal policy.

Where we must always proceed with caution though is in intrinsically linking a changing or modernized penal policy with a more enlightened one. In any adoption of a 'civilizing' narrative or an 'enlightened' 'humane' system we must remember that, for all the changes to punishment in the period, what remained was still a human left dangling from a rope and then subject to further post-mortem disgrace. We must then always ask 'civilizing' or 'humane' for whom? Here we return to the start and

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<sup>980</sup> Richardson, *Death, Dissection*, p. 75.

<sup>981</sup> King, *Punishing the Criminal Corpse*, p. 163.

<sup>982</sup> D. Garland, 'The Problem of the Body in Modern State Punishment', *Social Research* 78 (3) (2011) p. 768.

Robert Vest's send off in 1878. We are left asking in what sense is the state sanctioned execution and hidden burial of a man of limited educational attainment, proven to have suffered a potentially catastrophic brain injury and stupefied by drink, the actions of a humane and civilized society. Surely Vest's case is proof, if proof were needed, of Gatrell's powerful assertion that 'it is only because people have always needed to believe otherwise, that the words 'humanity' and 'civilization' still cohabit within progressive narratives.'<sup>983</sup>

### **Areas for potential future research**

In acknowledging some of the limitations of the research, I have simultaneously highlighted some of the potential areas for future research. Firstly, in any study of execution the social make-up and role of the crowd are a study in and of themselves and although scattered throughout this thesis, there is much more to be said on their role. There are long established reasons why locating them is very difficult and indeed during this thesis the sources uncovered, outside of the mediated reports of the press, are very limited. However, as pioneering studies of the London execution crowd have shown, it would be beneficial to gather a wider range of examples from the North-East region to begin to identify both the social make up and opinions of the execution crowd.<sup>984</sup> From this, one could begin to understand the extent to which receptions to capital punishment differed by region. Similarly, one could potentially ascertain the variant factors that affected the reception of the punishment itself and how that changed over time.

Secondly, in acknowledgement of the simultaneous confluence and dissonance between the regions sampled and the central state, it would appear that we need a far more detailed assessment of the reach of the central state, particularly in the nineteenth century. More importantly it must be far wider than a criminal justice analysis can allow. In this vain it will be more akin to the recent work of Inness, Lloyd Jones and Scull et al. amongst others in the movement to ascertain a Four Nations

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<sup>983</sup> Gatrell, *The Hanging Tree*, p. 590.

<sup>984</sup> White, *Ordering the Mob*.

approach to our understanding of the British state.<sup>985</sup> This studies' findings show that we are perhaps best to understand the North-East region in the same way that recent moves for 'Four Nations' studies have begun to understand the Great British Union. It is not a distinct region, untouched by broader cultural and social change nor marked by a uniform similarity or dissimilarity in practice from the centre, but a series of diverse localities in which differing approaches to punishment were taken to fit local needs. This thesis then highlights the need for a continuation of the burgeoning studies into localised histories of capital punishment. In this sense we return to the question that opened this thesis. Can we really have a truly global history of execution when we do not fully have a local one? The answer must surely be no.

Finally, much as recent national work on post-mortem punishment has offered the modern scholar points of comparison in its practice, incidence and presentation across the British Isles, so I hope that this early investigation into the continuing punishment of prison burial will allow for broader regional and national studies to build upon these findings. Furthermore, during investigations into the role of burial as a post-mortem punishment I have found numerous examples of the successful efforts of phrenologists in the region to gain access to the criminal body, after death. This has important implications for our understanding of the increasingly centralized control placed over the criminal corpse and the competing claims made towards it. In these early examples it would appear that the access of medical men from a burgeoning new 'science' were often prioritized over the family of the condemned. I hope to build on these early findings and situate the origins of the practice in the North East and then look to a bigger national picture of the practice in relation to the bodies of the condemned.

### **Contribution to knowledge**

In conclusion, this thesis has offered an original and sustained study of capital punishment in the North East of England between 1800-1878 and its attendant post-mortem punishments from 1752-1878. This study has sought to show that the North

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<sup>985</sup> J.G.A Pocock N. Lloyd-Jones and M. M. Scull (Eds.), *Four Nations Approaches to Modern 'British' History: A (Dis)United Kingdom?* (Springer, 2017).

East experience challenges both the idea of a uniform Northern experience of execution and the historiographical narrative of a unified English experience of the changing nature of capital punishment.

Through a detailed examination of the changes in the presentation of punishment in the selected North East regions, this thesis has shown that local context was as important, if not more, a driver of change than any overarching political or philosophical ideology. It has also undertaken the first sustained examination of the realities of English execution post 1868 in the North East: highlighting the intense secrecy surrounding the act, the explicit restriction of the press, the express exclusion of the criminal voice and the ongoing problems with its administration. Similarly, it has illustrated that in Durham in particular, far from a retrenchment of the punishment, the first decade following the 1868 Act saw a precipitous rise in the incidence of execution, in part a response to a perceived threat of Irish nationalism, and the return of hitherto presumed barbarisms of past eras, amongst them triple and quadruple executions and the return of female execution. Additionally, in its focus on post-mortem punishments the thesis has presented several initial findings in line with wider national studies; In particular, the use of the gibbet exclusively for men and the predominance of dissection as a post-mortem penal option. Furthermore, in adopting a longer timeline than recent pathbreaking studies, this thesis has shown that the denial of the return of the criminal body, particularly through prison burial, should be seen in line with earlier post-mortem punishments, that carried a deep sense of shame for both the offender and their wider family. In this sense then our understanding of the 1832 Anatomy Act and 1834 Hanging in Chains Act as signaling the end of post-mortem shaming punishments, must be reassessed. One hopes that future work on the place of the North East in the history of English Execution, will be able to build on these foundations.

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